



Government of West Bengal

Legislative Department

The West Bengal Code

Volume V

Bengal Acts, 1936 to 1947

and

West Bengal Acts, 1947 to 1949

(As modified up to the 1st October, 1956)

**Superintendent, Government Printing
West Bengal Government Press, Alipore, West Bengal
1956**

***Price—Indian, Rs. 10; English, 16s. 6d.**

CONTENTS.

	PAGE.
PREFACE	iii
Chronological table of enactments	v—xvi
Enactments <i>in extenso</i> —	
Bengal Acts, 1936 to 1947	1—392
West Bengal Acts, 1947 to 1949	393—609

PREFACE.

This, the fifth volume of the first edition of the West Bengal Code, contains such of the Bengal Acts of the years 1936 to 1947 and West Bengal Acts 1947 to 1949 as are now in force.

The publication of the Code was held up for some time for unavoidable reasons but has now been resumed. I wish to express my sense of gratitude to Shri Sankar Prasad Mitra, M. A. (Cantab.), Barrister-at-Law, Minister-in-charge, Legislative Department, for the interest he is taking in the prompt publication of the work.

S. K. D. GUPTA,

*Secretary to the Government of West Bengal,
Legislative Department.*

CALCUTTA :

The 1st October, 1956.

CHRONOLOGICAL TABLE OF ENACTMENTS.

v .

Year.	No.	Short title.	Page.	Remarks.
1		3	4	5
Bengal Acts, 1936 to 1947.				
1936	I	<i>The Court-fees (Bengal Third Amendment) Act, 1935.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1936	II	<i>The Calcutta Municipal (Second Amendment) Act, 1935.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1936	III	<i>The Bengal Land Registration Amendment) Act, 1935.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1936	IV	<i>The Bengal Wakf (Amendment) Act, 1935.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1936	V	<i>The Howrah Bridge (Amendment) Act, 1935.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1936	VI	<i>The Bengal Court of Wards (Amendment) Act, 1935.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1936	VII	<i>The Bengal Agricultural Debtors Act, 1936.</i>	1	
1936	VIII	<i>The Calcutta Municipal (Amendment) Act, 1936.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1936	IX	<i>The Bengal Alluvion and Diluvion (Amendment) Act, 1936.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1936	X	<i>The Bengal Whipping Act, 1936</i>	41	
1936	XI	<i>The Bengal Municipal (Amendment) Act, 1936.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1936	XII	<i>The Calcutta Municipal (Second Amendment) Act, 1936.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1936	XIII	<i>The Bengal Water Hyacinth Act, 1936.</i>	43	
1936	XIV	<i>The Bengal Local Self-Government (Amendment) Act, 1936.</i>	..	Amending Act. Not printed.
1936	XV	<i>The Bengal Local Self-Government (Second Amendment) Act, 1936.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1936	XVI	<i>The Bengal Local Self-Government Associations (Recognition) Act, 1936.</i>	55	
1936	XVII	<i>The Bengal Patni Taluks Regulation (Amendment) Act, 1936.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1936	XVIII	<i>The Presidency-towns Insolvency (Bengal Amendment) Act, 1936.</i>	57	
1936	XIX	<i>The Bengal Non-Agricultural Lands Assessment Act, 1936.</i>	..	<i>Repealed by West Ben. Act XX of 1949.</i>

CHRONOLOGICAL TABLE OF ENACTMENTS.

Year.	No.	Short title.	Page.	Remarks.
1	2		4	6
Bengal Acts, 1936 to 1947—contd.				
1937	I	<i>The Bengal Ministers' Salaries Act, 1937.</i>	..	<i>Repealed by West Ben. Act IX of 1948.</i>
1937	II	<i>The Bengal Legislative Assembly (Members' Emoluments) Act, 1937.</i>	63	
1937	III	<i>The Bengal Legislature (Removal of Disqualifications) Act, 1937.</i>	..	<i>Repealed by West Ben. Act VI of 1952.</i>
1938	I	<i>The Bengal Cruelty to Animals (Amendment) Act, 1938.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1938	II	<i>The Bengal Rhinoceros Preservation (Amendment) Act, 1937.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1938	III	<i>The Bengal Famine Insurance Fund Act, 1938.</i>	65	
1938	IV	<i>The Bengal Expiring Laws Act, 1938.</i>	69	
1938	V	<i>The Bengal Public Demands Recovery (Amendment) Act, 1938.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1938	VI	<i>The Bengal Tenancy (Amendment) Act, 1938.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1938	VII	<i>The Calcutta Official Receiver's Act, 1938.</i>	71	
1939	I	<i>The Bengal Repealing and Amending Act, 1938.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1939	II	<i>The Bengal Tenancy (Amendment) Act, 1939.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1939	III	<i>The Bengal Rates of Interest Act, 1939.</i>	..	<i>Repealed by Ben. Act XV of 1946.</i>
1939	IV	<i>The Bengal Maternity Benefit Act, 1939.</i>	77	
1939	V	<i>The Calcutta Municipal (Amendment and Validation) Act, 1939.</i>	83	
1939	VI	<i>The Bengal Excise (Amendment) Act, 1939.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1939	VII	<i>The Indian Stamp (Bengal Amendment) Act, 1939.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1939	VIII	<i>The Calcutta Police (Amendment) Act, 1939.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1939	IX	<i>The Bengal Finance Act, 1939</i>	..	<i>Repealed by West Ben. Act X of 1948.</i>
1939	X	<i>The Bengal Rural Poor and Unemployed Relief Act, 1939.</i>	85	

CHRONOLOGICAL TABLE OF ENACTMENTS.

vii

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
Bengal Acts, 1938 to 1947—contd.				
1939	XI	<i>The Calcutta Municipal (Amendment) Act, 1939.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1939	XII	<i>The Bengal Dentists Act, 1939</i>	..	<i>Repealed by West Ben. Act XIII of 1961.</i>
1939	XIII	<i>The Bengal Tenancy (Second Amendment) Act, 1939.</i>	91	
1939	XIV	<i>The Calcutta and Suburban Police (Amendment) Act, 1939.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1939	XV	<i>The Bengal Tanks Improvement Act, 1939.</i>	93	
1940	I	<i>The Bengal General Clauses (Amendment) Act, 1939.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1940	II	<i>The Eastern Frontier Rifles (Bengal Battalion Amendment) Act, 1939.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1940	III	<i>The Bengal Public Demands Recovery (Amendment) Act, 1939.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1940	IV	<i>The Bengal Finance (Amendment) Act, 1940.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1940	V	<i>The Bengal Jute Regulation Act, 1940.</i>	..	<i>Repealed by West Ben. Act XXXI of 1960.</i>
1940	VI	<i>The Bengal Workmen's Protection (Amendment) Act, 1940.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1940	VII	<i>The Inland Steam-Vessels (Bengal Amendment) Act, 1940.</i>	117	
1940	VIII	<i>The Bengal Agricultural Debtors (Amendment) Act, 1940.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1940	IX	<i>The Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, 1940.</i>	..	<i>Repealed by West Ben. Act XX of 1949.</i>
1940	X	<i>The Bengal Money-lenders Act, 1940.</i>	119	
1940	XI	<i>The Administrator-General's (Bengal Amendment) Act, 1940.</i>	149	
1940	XII	<i>The Official Trustees (Bengal Amendment) Act, 1940.</i>	153	
1940	XIII	<i>The Bengal Revenues (Charged Expenditure) Act, 1940.</i>	155	

Year.	No.	Short title.	Page.	Remarks.
1		3	4	
Bengal Acts, 1936 to 1947—contd.				
1940	XIV	.. <i>The Bengal Jute Regulation (Amendment) Act, 1940.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1940	XV	.. <i>The Bengal Patni Taluks Regulation (Amendment) Act, 1940.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1940	XVI	.. <i>The Bengal Shops and Establishments Act, 1940.</i>	159	
1940	XVII	.. <i>The Bengal Alluvion and Diluvion (Amendment) Act, 1940.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1940	XVIII	.. <i>The Bengal Tenancy (Amendment) Act, 1940.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1940	XIX	.. <i>The Bengal Legislature (Removal of Disqualifications Amendment) Act, 1940.</i>	..	<i>Repealed by West Ben. Act XIX of 1949.</i>
1940	XX	.. <i>The Bengal Local Authorities Census Expenses Contribution Act, 1940.</i>	..	<i>Repealed by Ben. Act XVI of 1946.</i>
1940	XXI	.. <i>The Bengal Co-operative Societies Act, 1940.</i>	173	
1941	I	.. <i>The Official Trustees (Bengal Amendment) Act, 1941.</i>	235	
1941	II	.. <i>The Bengal Rural Poor and Unemployed Relief (Amendment) Act, 1941.</i>	..	<i>Repealed by West Ben. Act VII of 1948.</i>
1941	III	.. <i>The Bengal Local Self-Government (Amendment) Act, 1941.</i>	..	<i>Repealed by West Ben. Act VII of 1948.</i>
1941	IV	.. <i>The Bengal Water Hyacinth (Amendment) Act, 1941.</i>	..	<i>Repealed by West Ben. Act VII of 1948.</i>
1941	V	.. <i>The Bengal Motor Spirit Sales Taxation Act, 1941.</i>	237	
1941	VI	.. <i>The Bengal Finance (Sales Tax) Act, 1941.</i>	247	
1941	VII	.. <i>The Eastern Frontier Rifles (Bengal Battalion Amendment) Act, 1941.</i>	..	<i>Repealed by West Ben. Act VII of 1948.</i>
1941	VIII	.. <i>The St. Thomas' School (Amendment) Act, 1941.</i>	..	<i>Repealed by West Ben. Act VII of 1948.</i>
1941	IX	.. <i>The Bengal Court of Wards (Amendment) Act, 1941.</i>	279	
1941	X	.. <i>The Bengal Patni Taluks Regulation (Amendment) Act, 1941.</i>	..	<i>Repealed by West Ben. Act VII of 1948.</i>
1941	XI	.. <i>The Bengal Raw Jute Taxation Act, 1941.</i>	281	

CHRONOLOGICAL TABLE OF ENACTMENTS.

ix

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	
Bengal Acts, 1936 to 1947—contd.				
1942	I	<i>The Bengal Public Demands Recovery (Amendment) Act, 1942.</i>	..	<i>Repealed by West Ben. Act VII of 1948.</i>
1942	II	<i>The Bengal Agricultural Debtors (Amendment) Act, 1942.</i>	..	<i>Repealed by West Ben. Act VII of 1948.</i>
1942	III	<i>The Bengal Non-Agricultural Tenancy (Temporary Provisions) Extending Act, 1942.</i>	..	<i>Repealed by West Ben. Act VII of 1948.</i>
1942	IV	<i>The Bengal Criminal Law (Industrial Areas) Amendment Act, 1942.</i>	291	
1942	V	<i>The Bengal Touts Act, 1942</i>	293	
1942	VI	<i>The Workmen's Compensation (Bengal Amendment) Act, 1942.</i>	299	
1942	VII	<i>The Bengal Land Revenue Sales (Amendment) Act, 1942.</i>	..	<i>Repealed by West Ben. Act VII of 1948.</i>
1942	VIII	<i>The Bengal Agricultural Debtors (Second Amendment) Act, 1942.</i>	..	<i>Repealed by West Ben. Act VII of 1948.</i>
1943	I	<i>The Calcutta and Suburban Police (Amendment) Act, 1943.</i>	..	<i>Repealed by West Ben. Act VII of 1948.</i>
1943	II	<i>The Bengal Land Revenue Sales (Amendment) Act, 1943.</i>	..	<i>Repealed by West Ben. Act VII of 1948.</i>
1943	III	<i>The Bengal Local Self-Government (Amendment) Act, 1943.</i>	..	<i>Repealed by West Ben. Act VII of 1948.</i>
1943	IV	<i>The Bengal (Rural) Primary Education (Amendment) Act, 1943.</i>	..	<i>Repealed by West Ben. Act VII of 1948.</i>
1943	V	<i>The Bengal Finance Act, 1943</i>	..	<i>Repealed by Ben. Act II of 1945.</i>
1943	VI	<i>The Bengal Non-Agricultural Tenancy (Temporary Provisions) Extending Act, 1943.</i>	..	<i>Repealed by West Ben. Act VII of 1948.</i>
1943	VII	<i>The Bengal Vagrancy Act, 1943</i>	303	
1944	I	<i>The Bengal Finance (Sales Tax) Amendment Act, 1944.</i>	..	<i>Repealed by West Ben. Act XIX of 1949.</i>
1944	II	<i>The Bengal Non-Agricultural Tenancy (Temporary Provisions) Extending Act, 1944.</i>	..	<i>Repealed by West Ben. Act XIX of 1949.</i>
1944	III	<i>The Bengal Orphanages and Widows' Homes Act, 1944.</i>	315	
1944	IV	<i>The Bengal Agricultural Income-tax Act, 1944.</i>	319	

CHRONOLOGICAL TABLE OF ENACTMENTS.

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
Bengal Acts, 1936 to 1947—contd.				
1944	V	The Bengal Alienation of Agricultural Land (Temporary Provisions) Act, 1944.	367	
1944	VI	The Bengal Diseases of Animals Act, 1944.	375	
1944	VII	The Coroners and Criminal Procedure (Bengal Amendment) Act, 1944.	..	Repealed by West Ben. Act XIX of 1949.
1945	I	The Bengal Legislative Chambers (Members' Emoluments) Amendment Act, 1945.	..	Repealed by West Ben. Act XIX of 1949.
1945	II	The Bengal Finance Act, 1945	..	Repealed by West Ben. Act X of 1948.
1945	III	The Bengal Non-Agricultural Tenancy (Temporary Provisions) Amendment Act, 1945.	..	Repealed by West Ben. Act XIX of 1949.
1945	IV	The Bengal Rent Recovery (Under-tenures) Amendment Act, 1945.	..	Repealed by West Ben. Act XII of 1947.
1945	V	The Bengal Suppression of Immoral Traffic (Amendment) Act, 1945.	..	Repealed by West Ben. Act XII of 1947.
1945	VI	The Bengal Embankment (Amendment) Act, 1945.	..	Repealed by West Ben. Act XI of 1948.
1945	VII	The Bengal Motor Spirit Sales Taxation (Amendment) Act, 1945.	..	Repealed by Ben. Act XIII of 1946.
1945	VIII	The Bengal Finance (Sales Tax) Amendment Act, 1945.	..	Repealed by West Ben. Act X of 1948.
1945	IX	The Bengal Finance (No. II) Act, 1945.	..	Repealed by West Ben. Act X of 1948.
1945	X	The Bengal Public Gambling (Penalties Enhancement) Act, 1945.	..	Repealed by West Ben. Act XIX of 1949.
1945	XI	The Bengal Private Forests Act, 1945.	..	Repealed by West Ben. Act XIV of 1948.
1945	XII	The Bengal Tenancy (Amendment) Act, 1945.	..	Repealed by West Ben. Act XII of 1947.
1945	XIII	The Bengal Destitute Persons (Repatriation and Relief) Act, 1945.	..	Repealed by West Ben. Act XIX of 1949.
1945	XIV	The Bengal Motor Vehicles Tax (Amendment) Act, 1945.	..	Repealed by West Ben. Act XII of 1947.
1945	XV	The Murshidabad Act, 1945	..	Repealed by Ben. XV of 1946.

CHRONOLOGICAL TABLE OF ENACTMENTS:

Year.	No.	Short title.	Page.	Remarks.
1		3	4	
Bengal Acts, 1936 to 1947—contd.				
1945	XVI	<i>The Bengal Slum Improvement Act, 1945.</i>	..	<i>Repealed by West Ben. Act XIX of 1949.</i>
1945	XVII	<i>The Bengal Destitute Persons (Repatriation and Relief) Extending Act, 1945.</i>	..	<i>Repealed by West Ben. Act XIX of 1949.</i>
1946	I	<i>The Bengal Legislature (Corrupt Practices and Election Enquiries) Act, 1946.</i>	..	<i>Spent.</i>
1946	II	<i>The Bengal Excise (Amendment) Act, 1946.</i>	..	<i>Repealed by West Ben. Act XII of 1947.</i>
1946	III	<i>The Bengal Finance (Repealing) Act, 1946.</i>	..	<i>Repealed by West Ben. Act X of 1948.</i>
1946	IV	<i>The Bengal Finance (Sales Tax) Amendment Act, 1946.</i>	..	<i>Spent.</i>
1946	V	<i>The Bengal Tanks Improvement (Amendment) Act, 1946.</i>	..	<i>Repealed by West Ben. Act XXIV of 1948.</i>
1946	VI	<i>The Bengal Co-operative Societies (Amendment) Act, 1946.</i>	..	<i>Repealed by West Ben. Act XII of 1947.</i>
1946	VII	<i>The Bengal Slum Improvement (Amendment) Act, 1946.</i>	..	<i>Amending Act. Principal Act repealed.</i>
1946	VIII	<i>The Bengal Finance (Sales Tax) Second Amendment Act, 1946.</i>	..	<i>Spent.</i>
1946	IX	<i>The Bengal Cess (Amendment) Act, 1946.</i>	..	<i>Repealed by West Ben. Act XII of 1947.</i>
1946	X	<i>The Albert Victor Leper Hospital (Amendment) Act, 1946.</i>	..	<i>Amending Act. Not printed.</i>
1946	XI	<i>The Bengal Finance (Extending) Act, 1946.</i>	..	<i>Amending [Act. Spent.</i>
1946	XII	<i>The Bengal Special Tribunals (Continuance) Act, 1946.</i>	383	
1946	XIII	<i>The Bengal Motor Spirit Sales Taxation (Amendment) Act, 1946.</i>	..	<i>Amending Act. Not printed.</i>
1946	XIV	<i>The Calcutta Disturbances Commission of Enquiry Act, 1946.</i>	385	
1946	XV	<i>The Murshidabad Act, 1946</i>	387	
1946	XVI	<i>The Bengal Repealing and Amending Act, 1946.</i>	..	<i>Not printed.</i>
1947	I	<i>The Bengal Ordinances Temporary Enactment Act, 1947.</i>	..	<i>Spent.</i>

CHRONOLOGICAL TABLE OF ENACTMENTS.

Year. 1	No. 2	Short title. 3	Page. 4	Remarks. 5
Bengal Acts, 1936 to 1947—consolid.				
1947	II	.. The Bengal Non-Agricultural Tenancy (Temporary Provisions) Extending Act, 1947.	..	Amending Act. Principal Act repealed.
1947	III	.. The Bengal Dentists (Amendment) Act, 1947.	..	Amending Act. Principal Act repealed.
1947	IV	.. The Cattle-trespass (Bengal Amendment) Act, 1947.	391	
1947	V	.. The Bengal Tenancy (Amendment) Act, 1947.	..	Amending Act. Not printed.
1947	VI	.. The Bengal Local Self-Government Associations (Recognition) Amendment Act, 1947.	..	Amending Act. Not printed.
West Bengal Acts, 1947 to 1949.				
1947	I	.. The Calcutta Municipal (Amendment) Act, 1947.	..	Amending Act. Not printed.
1947	II	.. The Bengal Finance (West Bengal Extending) Act, 1947.	..	Amending Act. Not printed.
1947	III	.. The West Bengal District Boards Act, 1947.	393	
1947	IV	.. The West Bengal District School Boards Act, 1947.	397	
1947	V	.. The West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947.	401	
1947	VI	.. The West Bengal Disturbed Areas Act, 1947.	415	
1947	VII	.. The West Bengal Criminal Law Amendment Act, 1947.	417	
1947	VIII	.. The Bengal Public Demands Recovery (West Bengal Amendment) Act, 1947.	..	Amending Act. Not printed.
1947	IX	.. The Bengal Local Self-Government (West Bengal Amendment) Act, 1947.	423	
1947	X	.. The Bengal Village Self-Government (West Bengal Amendment) Act, 1947.	425	
1947	XI	.. The Bengal Municipal (West Bengal Amendment) Act, 1947.	427	
1947	XII	.. The West Bengal Laws (Amendment and Repeal) Act, 1947.	..	Not printed.

CHRONOLOGICAL TABLE OF ENACTMENTS.

xiii

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
West Bengal Acts, 1947 to 1949—contd.				
1948	I	The West Bengal Motor Spirit Sales Taxation (Amendment) Act, 1948.	..	Amending printed. Act. Not
1948	II	The West Bengal Land (Requisition and Acquisition) Act, 1948.	429	
1948	III	<i>The West Bengal Security Act, 1948.</i>	..	<i>Spent.</i>
1948	IV	The West Bengal Special Benches (Continuance) Act, 1948.	437	
1948	V	<i>The West Bengal Expiring Laws Act, 1948.</i>	..	<i>Spent.</i>
1948	VI	<i>The Requisitioned Land (Continuance of Powers) West Bengal Amendment Act, 1948.</i>	..	<i>Spent.</i>
1948	VII	The West Bengal Repealing and Amending Act, 1948.	..	Not printed.
1948	VIII	<i>The Corporation of Calcutta (Temporary Supersession) Act, 1948.</i>	..	<i>Spent.</i>
1948	IX	<i>The West Bengal Ministers' Emoluments Act, 1948.</i>	..	<i>Repealed by West Ben. Act V of 1952.</i>
1948	X	The West Bengal Finance (Amendment and Repeal) Act, 1948.	..	Amending printed. Act. Not
1948	XI	The Bengal Embankment (West Bengal Amendment) Act, 1948.	..	Amending printed. Act. Not
1948	XII	The Corporation of Calcutta (Investigation Commission) Act, 1948.	439	
1948	XIII	The West Bengal Factories and Mines (Control of Dismantling) Act, 1948.	443	
1948	XIV	The West Bengal Private Forests Act, 1948.	447	
1948	XV	The West Bengal District Boards (Amendment) Act, 1948.	..	Amending printed. Act. Not
1948	XVI	<i>The Bengal Jute Regulation (West Bengal Amendment) Act, 1948.</i>	..	<i>Repealed by West Ben. Act XXXI of 1950.</i>
1948	XVII	<i>The West Bengal Electricity (Emergency Powers) Act, 1948.</i>	..	<i>Spent.</i>

CHRONOLOGICAL TABLE OF ENACTMENTS.

Year.	No.	Short title.	Page.	Remarks.
	2	3	4	
West Bengal Acts, 1947 to 1948—contd.				
1948	XVIII ..	The Bengal Medical (West Bengal Amendment) Act, 1948.	..	Amending Act. Not printed.
1948	XIX ..	The West Bengal Security (Amendment) Act, 1948.	..	Amending Act. Principal Act spent.
1948	XX ..	The Bengal Non-Agricultural Tenancy (Temporary Provisions) West Bengal Amendment Act, 1948.	..	Amending Act. Principal Act repealed.
1948	XXI ..	The West Bengal Land Development and Planning Act, 1948.	483	
1948	XXII ..	The Calcutta Improvement (Amendment) Act, 1948.	..	Amending Act. Not printed.
1948	XXIII ..	<i>The 24-Parganas District Board Dissolution (Temporary Provisions) Act, 1948.</i>	..	<i>Spent.</i>
1948	XXIV ..	The Bengal Tanks Improvement (West Bengal Amendment) Act, 1948.	..	Amending Act. Not printed.
1948	XXV ..	The West Bengal Raw Jute Futures Act, 1948.	491	
1948	XXVI ..	The West Bengal Cement Control Act, 1948.	495	
1948	XXVII ..	The Bengal Motor Spirit Sales Taxation (West Bengal Amendment) Act, 1948.	..	Amending Act. Not printed.
1948	XXVIII ..	The Bengal Excise (West Bengal Amendment) Act, 1948.	..	Amending Act. Not printed.
1948	XXIX ..	The Bengal Undesirable Advertisements (Control) Act, 1948.	499	
1948	XXX ..	The Calcutta Sheriff's Act, 1948.	503	
1948	XXXI ..	The West Bengal Land-revenue, Rent and Cess (Apportionment) Act, 1948.	507	
1948	XXXII ..	<i>The West Bengal Black Marketing Act, 1948.</i>	..	<i>Repealed by West Ben. Act XXXIII of 1954.</i>
1948	XXXIII ..	The West Bengal Maternity Benefit (Tee Estates) Act, 1948.	511	

CHRONOLOGICAL TABLE OF ENACTMENTS.

xv

Year.		Short title.	Page.	Remarks.		
1		3	4	5		
West Bengal Acts, 1947 to 1949—contd.						
1948	XXXIV ..	The West Bengal District School Boards (Amendment) Act, 1948.	..	Amending printed.	Act.	Not
1948	XXXV ..	The Calcutta and Suburban Police (Amendment) Act, 1948.	..	Amending printed.	Act.	Not
1948	XXXVI ..	The Calcutta Hackney-carriage (Amendment) Act, 1948.	..	Amending printed.	Act.	Not
1948	XXXVII	<i>The West Bengal Hindu Social Disabilities Removal Act, 1948.</i>	..	<i>Repealed by West Act XIII of 1956.</i>	Ben.	
1948	XXXVIII	<i>The West Bengal Premises Rent Control (Temporary Provisions) Act, 1948.</i>	..	<i>Repealed by West Act XVII of 1950.</i>	Ben.	
1949	I ..	The West Bengal National Volunteer Force Act, 1949.	519			
1949	II ..	The Calcutta Thika Tenancy Act, 1949.	525			
1949	III ..	The West Bengal Agricultural Income-tax (Amendment) Act, 1949.	..	Amending printed.	Act.	Not
1949	IV ..	The West Bengal Premises Requisition and Control (Temporary Provisions) Amendment Act, 1949.	..	Amending printed.	Act.	Not
1949	V ..	The West Bengal Money-lenders (Amendment) Act, 1949.	..	Amending printed.	Act.	Not
1949	VI ..	The Corporation of Calcutta (Temporary Supersession) Amendment Act, 1949.	..	Amending Act.	Principal Act spent.	
1949	VII ..	The West Bengal Local Self-Government (Amendment) Act, 1949.	..	Amending printed.	Act.	Not
1949	VIII ..	The West Bengal District Boards (Amendment) Act, 1949.	..	Amending printed.	Act.	Not
1949	IX ..	The West Bengal Motor Vehicles Tax (Amendment) Act, 1949.	..	Amending printed.	Act.	Not
1949	X ..	The West Bengal Finance (Sales Tax) Amendment Act, 1949.	..	Amending printed.	Act.	Not
1949	XI ..	The West Bengal Amusements Tax (Amendment) Act, 1949.	..	Amending printed.	Act.	Not
1949	XII ..	The West Bengal Finance Act, 1949.	..	Amending printed.	Act.	Not

CHRONOLOGICAL TABLE OF ENACTMENTS.

Year. 1	No. 2	Short title. 3	Page. 4	Remarks. 5
West Bengal Acts, 1947 to 1949—conold.				
1949	XIII ..	The Bengal Nurses (West Bengal Amendment) Act, 1949.	543	
1949	XIV ..	The West Bengal Molasses Control Act, 1949.	545	
1949	XV ..	The West Bengal District School Boards (Amendment) Act, 1949.	..	Amending Act. Not printed.
1949	XVI ..	The Mahajati Sadan Act, 1949	549	
1949	XVII ..	The Calcutta Improvement (Amendment) Amending Act, 1949.	..	Amending Act. Not printed.
1949	XVIII ..	<i>The West Bengal Evacuees (Administration of Property) Act, 1949.</i>	..	<i>Repealed by West Ben. Act V of 1951.</i>
1949	XIX ..	The West Bengal Repealing and Amending Act, 1949.	..	Not printed.
1949	XX ..	The West Bengal Non-Agricultural Tenancy Act, 1949.	559	
1949	XXI ..	The West Bengal Criminal Law Amendment (Special Courts) Act, 1949.	605	

The West Bengal Code

Volume V

BENGAL ACTS, 1936 TO 1947 AND WEST BENGAL ACTS, 1947 TO 1949.

Bengal Act VII of 1936

THE BENGAL AGRICULTURAL DEBTORS ACT, 1936

CONTENTS.

SECTION.

1. Short title, extent and commencement.
2. Definitions.
3. Establishment of Debt Settlement Boards.
4. Power of State Government to cancel appointments of Chairman and members of,
• or to dissolve, a Board.
5. Delegation of power to Commissioner.
6. Tenure of office.
7. State Government may invest Boards with certain powers.
8. Application for settlement of debts.
9. Application for settlement of joint debts.
10. Form and verification of application.
11. Statement of debt to be included in application.
12. Procedure on receipt of application.
13. Further statements of debts.
- 13A. Notice to persons in possession under a creditor.
14. Production of documents.
15. Board to attempt amicable settlement.
16. Power of Board to require attendance of persons and production of documents and
to receive evidence.
17. Dismissal of applications. •
18. Determination of amounts of debts.
19. Settlement of debts.
- 19A. Delivery of immovable property to debtor.
20. Decision by Board as to whether a person is a debtor.
21. Grant of certificate in respect of certain debts.
22. Adjustment of an insolvent debtor's debts.
23. The principal of certain debts not to be reduced.
24. Exemption of certain property of an insolvent debtor from sale.
25. Awards.
26. Special provision for arrears of rent.

The Bengal Agricultural Debtors Act, 1936.

[Ben. Act VII of 1936.]

SECTION.

27. Existing mortgages, etc., to subsist.
28. Recovery of amounts included in an award.
29. Distribution of sale proceeds.
30. Distribution of balance of sale proceeds when land is sold in execution of a decree or certificate for arrears of rent.
31. Settlement of debts of a member of a co-operative society.
32. Stay of proceedings before the Board.
33. Bar to suits and proceedings in Civil and Revenue Courts.
34. Stay and abatement of suits and proceedings.
35. Bar to execution of certain decrees and certificates.
36. Certain decrees to be treated as nullities.
37. Attachment of debtor's immovable property.
- 37A. Applications for restoration to possession of immovable property sold in decrees or certificates for debt.
38. Bar to appeal or revision.
39. Transfer of applications from one Board to another.
40. Appeals.
- 40A. Revision.
41. (*Repealed.*)
42. Reference to Appellate Officer.
43. Control over Board.
44. Power of Board to review its order.
45. Certain Acts not to apply to the proceedings under this Act.
46. Representation of a party before a Board.
- 46A. Power to frame and publish lists of touts.
- 46B. Report to Subdivisional Magistrate against suspected touts.
- 46C. Hanging up of lists of touts in Board's office.
- 46D. Presumption as to touts.
- 46E. Complaint to Subdivisional Magistrate against touts found within precincts of Board's office.
- 46F. Penalty.
47. Registration of awards and certificates.
48. Publication of orders and awards.
49. Chairman and members of Boards deemed to be public servants.
50. Proceedings deemed to be judicial proceedings.
51. Indemnity.
52. Extension of period of limitation.
53. Negotiability of awarded amounts.
54. Penalties.
55. Power to make rules.
56. Penalty for breach of rules.
57. Certain fees recoverable as public demands.

Bengal Act VII of 1936

THE BENGAL AGRICULTURAL DEBTORS ACT, 1936.¹

Repealed in Part and Amended .. Bengal Act VIII of 1940.

Amended { Bengal Act II of 1942.
Bengal Act V of 1942.
Bengal Act VIII of 1942.
West Bengal Act VII of 1948.

Adapted { The Government of India
(Adaptation of Indian
Laws) Order, 1937.
The Indian Independence
(Adaptation of Bengal and
Punjab Acts) Order, 1948.
The Adaptation of Laws
Order, 1950.

[9th April, 1936.]

An Act to provide for the relief of indebtedness of agricultural debtors in Bengal.

Whereas it is expedient to provide for the relief of indebtedness of agricultural debtors and to amend the law governing the relations between agricultural debtors and their creditors ;

And whereas the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

5 and 6
Geo.
V, c. 61 ;
6 and 7
Geo. V,
c. 37 ;
9 and 10
Geo. V,
c. 101.

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Agricultural Debtors Act, ²[1936].

Short title,
extent and
commence-
ment.

(2) It extends to the whole of ³[West Bengal].

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 12th August, 1935, page 65 ; and for report of the Select Committee, see the *Calcutta Gazette*, dated the 21st November, 1935, Part IV, page 200 ; and for Proceedings of the Bengal Legislative Council, see the Proceedings of the Bengal Legislative Council, Volume XLVI, No. 2, pages 492 and 559, and *ibid* XLVII, No. 1, pages 60, 76, 113, 143, 176, 205, 244, 277, 309, 343, 395 and 429, and *ibid* No. 2, pages 17, 49, 98, 141, 291 and 350.

²These figures within square brackets were substituted for the figures "1935" by section 2 and the First Schedule to the West Bengal Repealing and Amending Act, 1948 (West Ben. Act VII of 1948).

³These words within square brackets were substituted for the word "Bengal" by
of Article 3 of the Indian Independence (Adaptation of
Acts) Order, 1948.

The Bengal Agricultural Debtors Act, 1936.

[Ben. Act VI

(Section 2.)

(3) It shall come into ¹force in such areas on such dates as the ²[State Government] may, by notification, direct.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “agriculture” includes horticulture and dairy farming and the use of land for any purpose of husbandry inclusive of the keeping or breeding of live-stock, poultry or bees and the growing of fruits, vegetables and the like ;

(2) “amount payable under an award” means an amount included under clause (d) of sub-section (1) of section 25 in an award as payable by a debtor in respect of any debt, or any part of such amount which remains unpaid, together with any interest on such amount or part thereof which is due under the award ;

(3) “Appellate Officer” means an officer appointed under section 40 ;

(4) “award” means an award as made by a Board under sub-section (2) of section 19 or sub-section (6) of section 22, ³[or sub-section (5) of section 37A] or as confirmed or modified by an Appellate Officer under sub-section (5) of section 40 ⁴[or under section 40A] ;

(5) “Board” means a Debt Settlement Board established under sub-section (1) of section 3, and includes an officer or the Collector authorised under the proviso to section 4 ;

(6) “Certificate-officer” means a Certificate-officer as defined in the Bengal Public Demands Recovery Act, 1913 ;

Ben. Act
III of
1913.

⁵[(6A) “Civil Court” means a Civil Court within the meaning of the Bengal, Agra and Assam Civil Courts Act, 1887, and includes any Court exercising appellate or revisional jurisdiction over any such Court] ⁶[and also includes a union court established under the Bengal Village Self-Government Act, 1919] ;

XII of
1887.

Ben. Act
V of 1919.

¹The Act was brought into force in certain districts with effect from the 3rd July, 1936. *Vide* notification No. 9186L.R., dated the 26th June, 1936 published in the *Calcutta Gazette* of the 2nd July, 1936, Part I, page 1625.

²The words “Provincial Government” were originally substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “State” was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³These words, figures and letter within square brackets were inserted by s. 2(1) of the Bengal Agricultural Debtors (Amendment) Act, 1942 (Ben. Act II of 1942).

⁴These words, figures and letter within square brackets were inserted, *ibid.*

⁵This clause (6A) was inserted by section 2(1) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

⁶These words and figures within square brackets were inserted by s. 2 (2) of the Bengal Agricultural Debtors (Amendment) Act, 1942 (Ben. Act II of 1942).

The Bengal Agricultural Debtors Act, 1936.

of 1936.]

(Section 2.)

(7) "Collector" includes any officer appointed by the ¹[State Government] to exercise any of the powers of a Collector under this Act;

(8) "debt" includes all liabilities ²[incurred prior to the first day of January 1940] of a debtor in cash or in kind, secured or unsecured, whether payable under a decree or order of a Civil Court or otherwise, and whether payable presently or in future, but does not include the following:—

(i) any amount the liability for the payment of which is only contingent;

(ii) any rent not due at the time when a Board determines the amount of debts under section 18;

(iii) any share of the produce of land payable on account of land cultivated under the system known as *adhi*, *barga* or *bhag*;

(iv) any amount recoverable as a public demand, except—

(a) an amount referred to in sub-section (1) of section 28,
* * *

(b) arrears of rent payable on account of the use or occupation of land held by a tenant, ⁴[and

(c) any sum referred to in Article 12A of Schedule I to the Bengal Public Demands Recovery Act, 1913, or any sum ordered by a liquidator under ⁵[any Provincial Act or Act of the State Legislature] for the time being in force, relating to co-operative societies to be recovered as a contribution to the assets of a co-operative society or as the cost of liquidation thereof;]

(v) any amount a suit or application for the recovery of which is barred ⁶[by limitation, or which is otherwise irrecoverable under the law;]

(vi) any debt due to any bank included in the Second Schedule to the Reserve Bank of India Act, 1934;

⁷[(vii) any tax or rate due to a Municipality or Union Board or Union Committee;]

Ben. Act
III of
1913.

II of 1934.

¹See foot-note 2 on page 4, *ante*.

²These words and figures within square brackets were inserted by section 2(2) (a) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

³The word "and" was omitted by section 2 (2) (b) (i), *ibid*.

⁴The word "and" and sub-clause (iv)(c) were inserted by section 2 (2) (b)(ii), *ibid*.

⁵These words within square brackets were substituted for the words "any Act of the Provincial Legislature" by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

⁶These words within square brackets were substituted for the words "by limitation; or" by section 2 (2)(c) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

⁷This sub-clause (vii) was inserted by section 2(2) (d), *ibid*.

(Section 2.)

(9) "debtor" means a debtor whose primary means of livelihood is agriculture and who—

(a) is a *raiyat* or an under-*raiyat*, or

(b) cultivates land himself or by members of his family or by hired labourers or by *adhidars*, *bargadars* or *bhagdars*;

and includes a group of persons who join in making an application under the provisions of sub-section (1) of section 9¹ [and any person who, by virtue of the provisions of sub-section (7) of section 37A shall be deemed to be a debtor;]

(10) "loan" means a loan whether of money or in kind, and includes any transaction which is, in the opinion of a Board, in substance a loan;

(11) "notification" means a notification published in the² [Official Gazette];

³[(11A) "original principal" means the loan as originally borrowed, excluding any amount of interest on such loan which may at any time have been included as principal;]

(12) "prescribed" means prescribed by rules made under this Act;

(13) "settlement" includes an amicable settlement and a settlement or adjustment made by order of a Board;

(14) "supplementary income" means any income derived by the debtor from any source other than agriculture;

⁴(14a) "tout" means a person who habitually frequents the precincts of the office of a Board except—

(a) for the purpose of his own proceedings before such Board, or

(b) as an agent of a party permitted to represent such party under section 46;

(15) the expressions "landlord", "*raiyat*", "under-*raiyat*" and "rent" have the same meanings as in the Bengal Tenancy Act, 1885. VIII of 1885.

¹These words, figures and letter within square brackets were inserted by s. 2(3) of the Bengal Agricultural Debtors (Amendment) Act, 1942 (Ben. Act II of 1942).

²These words within square brackets were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³This clause (11A) was inserted by section 2(3) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

⁴This clause (14a) was inserted by s. 17 of the Bengal Touts Act, 1942 (Ben. Act V of 1942).

The Bengal Agricultural Debtors Act, 1936.

of 1936.]

(Sections 3—8.)

3. (1) The ¹[State Government] may, by notification, establish one or more Debt Settlement Boards for any local area specified in the notification.

Establishment of Debt Settlement Boards.

(2) Each Board shall consist of a Chairman and of not more than four other members, to be appointed by the ¹[State Government].

4. The ¹[State Government] may, at any time, for reasons to be recorded in writing, cancel, by notification, the appointment of the Chairman or of any other member of a Board or dissolve any Board :

Power of State Government to cancel appointments of Chairman and members of, or to dissolve, a Board.

Provided that if, when a Board is dissolved, the ¹[State Government] does not consider the appointment of another Board to be necessary or desirable, it may authorise any ²[servant of the Government] to exercise such of the powers of the Board in connection with the making of awards as it may specify and the Collector to exercise all or any of the other powers of the Board.

5. The ¹[State Government] may, by notification, delegate its powers under sections 3 and 4 to the Commissioner.

Delegation of power to Commissioner.

6. The Chairman and the other members of a Board shall be appointed for a term of not more than three years, but shall be eligible for reappointment.

Tenure of office.

7. The ¹[State Government] may, by notification, from time to time, empower a Board to exercise all or any of the powers under ³[sub-sections (2) or (3) of section 9], sub-section (2) of section 13, clause (b) ⁴[or clause (c)] of sub-section (1) of section 19, section 21, or sub-section (1) of section 22, and unless so empowered a Board shall not exercise any such powers.

State Government may invest Boards with certain powers.

8. (1) Subject to the provisions of section 9, a debtor may make an application for the settlement of his debts to a Board established for the local area within which he ordinarily resides within ⁵[seven years] after the first Board is established under sub-section (1) of section 3 for that local area.

Application for settlement of debts.

¹See foot-note 2 on page 4, ante.

²The words "servant of the Crown" were originally substituted for the words "officer who has had judicial experience" by section 3 of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940), and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³These words, figures and brackets within square brackets were substituted for the words, figures and brackets "sub-section (2) of section 9" by section 4(a) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

⁴These words, letter, figures and brackets within square brackets were inserted by section 4(b), *ibid.*

⁵These words within square brackets were substituted for the words "five years" by s. 2 of the Bengal Agricultural Debtors (Second Amendment) Act, 1942 (Ben. Act VIII of 1942.)

(Section 9.)

(2) Unless the debtor has already made an application under sub-section (1) any of his creditors may make an application to a Board to which the debtor might have applied under that sub-section.

(3) If applications are made to more than one Board in respect of the debts of the same debtor, such applications shall, subject to rules made under this Act, be transferred to and dealt with by one Board.

(4) No objection as to the place of presentation of the application shall be allowed by the Appellate Officer unless such objection was taken, at the earliest opportunity, before the Board to which the application was made and unless there has been a consequent failure of justice.

(5) Notwithstanding anything contained in sub-section (1), a Board may for good and sufficient reason entertain a further application in respect of any debt incurred before the date of a first application under sub-section (1) or sub-section (2) whether such application was made to it or to any other Board, except when such application under either of the said sub-sections has been dismissed under sub-section (3) of section 13 or under clause (b) (ii) of sub-section (1) or sub-section (2) of section 17.

(6) A Board shall not entertain any further application for the settlement of any debt which has been incurred by a debtor (including any rent which has become due) after the date of application under sub-section (1) or sub-section (2).

Applica-
tion for
settle-
ment of
joint
debts.

9. (1) An application may be made under sub-section (1) of section 8 for the settlement of—

- (a) an ancestral debt for which two or more persons are jointly liable if one of such persons is a debtor within the meaning of this Act, and they all join in making such application, or
- (b) a debt for which two or more persons are jointly liable if all such persons are debtors within the meaning of this Act, and they all join in making such application,

and the Board may pass orders under this Act regarding any debt to which such application relates.

(2) If a debtor within the meaning of this Act is jointly liable with other persons for any debt other than a debt for arrears of rent such debtor may make an application under sub-section (1) of section 8 for relief in respect of his liability in regard to such debt, and the Board, after consideration of the facts and circumstances of the case, may, if so empowered under section 7, pass such order as it thinks fit under this Act regarding the debt so far as such

The Bengal Agricultural Debtors Act, 1936.

of 1

(Sections 10, 11.)

applicant is concerned and such order of the Board shall not be questioned in any Civil Court or in any manner other than that provided in this Act:

Provided that an order of the Board under this sub-section shall not affect the liability of any other person who is jointly liable with the debtor for the debt, but in no case shall the creditor to whom the debt is due to be entitled to realize more than his dues from the persons jointly liable.

¹[(3) If a debtor within the meaning of this Act is liable with other persons for a debt for arrears of rent, such debtor may, notwithstanding the provisions of clause (b) of sub-section (1), make an application under sub-section (1) of section 8 for relief in respect of the entire amount of such debt, and the Board, after consideration of the facts and circumstances of the case, may, if so empowered under section 7, pass such order as it thinks fit under this Act regarding the entire amount of such debt, and such order of the Board shall not be questioned in any Civil Court or in any manner other than that provided in this Act:

Provided that, notwithstanding anything contained in any other law, —

- (a) on compliance in full by the said debtor with an order of the Board under this sub-section, his liability and that of the said other persons to the landlord for the arrears of rent in respect of which such order is made, shall cease, but the said other persons shall be liable to contribute to the debtor in respect of the sum paid by him under the said order, and
- (b) during the period allowed in the said order for full compliance with the terms thereof relating to the arrears of rent, the landlord shall be debarred from instituting a suit for the recovery of the same, unless during such period the debtor fails to comply with the said terms.]

10. Every application under section 8 shall be in writing in the prescribed form and shall be signed and verified in the prescribed manner.

Form and verification of application.

11. (1) Any application made by a debtor under sub-section (1) of section 8 shall contain a statement of debt, in the prescribed form, which shall include the following :—

Statement of debts to be included in application.

- (a) the name of the place where he ordinarily resides;
- (b) the names and addresses of his creditors, the total amount claimed by each creditor, to be owing to him in respect of each debt, so far as is known to the debtor, and a note whether each such claim is admitted by the debtor;
- (c) the history of each such debt with particulars of the original principal and the rate of interest chargeable;

¹This sub-section (3) was added by section 5 of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

(Section 11.)

- (d) details of any debts for which the debtor is liable as a surety or is liable with other persons as a joint debtor or joint surety together with the names and addresses of all such persons;
 - ¹[(dd) details of any liabilities incurred on or after the first day of January 1940;]
 - (e) particulars of the debtor's property both movable and immovable (including claims due to him), a specification of its value and of the places where it may be found, and details of any attachment, mortgage, lien or charge subsisting thereon together with the names and addresses of the co-sharers, if any, of the debtor;
 - ²[(ee) particulars of any property as in clause (e) of which the creditor has taken possession either as security for, or in lieu of payment of, any portion of the principal of the debt or any portion of the interest thereon, together with the name and address of any person who may be in possession of any portion of such property under the creditor;]
 - (f) particulars of any property as in clause (e) which has been transferred by the debtor within two years previous to the date of his application together with the name and address of the transferee;
 - (g) particulars of any supplementary income of the debtor; and
 - (h) a declaration that all his debts and all his properties have been included in the statement.
- (2) An application made by a creditor under sub-section (2) of section 8 shall contain a statement of debt, in the prescribed form, which shall include the following:—
- (a) the name of the place where the debtor ordinarily resides;
 - (b) the total amount of every debt claimed by the creditor to be owing to him from the debtor;
 - (c) the history of each such debt with particulars of the original principal and the rate of interest chargeable;
 - (d) the names and addresses of the other creditors, so far as they are known to the creditor;
 - (e) particulars, so far as they are known to the creditor, of the debtor's property, as in clause (e) of sub-section (1);

¹This clause (dd) was inserted by section 6(1) (e) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

²This clause (ee) was inserted by section 6(1)(b), *ibid.*

of 1936.]

;

(Sections 12, 13.)

¹[(*ee*) particulars of any property as in clause (e) of which the creditor has taken possession either as security for, or in lieu of payment of, any portion of the principal of the debt or any portion of the interest thereon, together with the name and address of any person who may be in possession of any portion of such property under the creditor;]

(f) particulars, so far as they are known to the creditor, of any supplementary income of the debtor; and

(g) a declaration that agriculture is the primary means of livelihood of the debtor.

12. (1) On receipt of an application under section 8, the Board shall pass an order fixing a date and place for consideration of the application, unless the application is dismissed forthwith under section 17.

Procedure on receipt of application.

(2) The Board shall, in the prescribed manner, give notice of such order to the debtor (if he is not himself the applicant) or (if the debtor is the applicant) to all persons whose names and addresses are given in the application.

• (3) The applicant may, at the discretion of the Board, be examined on oath or affirmation on the date fixed under sub-section (1) or on such other date as the Board may fix and a memorandum of the substances of the statement made by the applicant shall be recorded in writing by the Board.

(4) No woman who has made an application under section 8, shall, against her will, be required to appear in person before the Board for the purpose of being examined under this section.

13. (1) ²[At the time of giving the notice referred to in sub-section (2) of section 12, the Board shall,] in the prescribed manner, serve a notice on the debtor (unless the debtor is himself the applicant) and on every creditor whose name and address are given in the application and also publish a general notice requiring the debtor and all creditors to submit a statement of debt in the prescribed form within one month of the date of service of the notice, or publication of the general notice, whichever is later ³[and further requiring all creditors to produce on a date specified

Further statements of debts.

¹This clause (*ee*) was inserted by section 6(2) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

²These words, figures and brackets within square brackets were substituted for the words and figures "If after consideration of the application the Board does not dismiss the application forthwith under section 17, it shall," by section 7(a), *ibid.*

³These words within square brackets were inserted by section 7 (b), *ibid.*

(Section 13A.)

in the notices all documents (including entries in books of account) by which the creditor intends to prove any debt owing to him, together with a true copy of each such document]:

Provided that, if the Board is satisfied that the debtor or any creditor is for good and sufficient cause unable to comply with such notice, it may extend the period for the submission of his statement of debt ¹[or the production of his documents and true copies thereof].

(2) If any creditor fails to comply with a notice under sub-section (1), the Board, if so empowered under section 7, may pass an order in writing declaring that the amount of any debt due to him from the debtor, on the date of such order shall, for the purposes of this Act, be deemed to be the amount stated in the statement of debt submitted by the debtor, and that no debt of which the creditor has failed to submit a statement, other than a debt which the debtor has included in his statement of debt shall be payable;

and such order shall not be questioned in any Civil Court or in any manner other than that provided in this Act.

(3) If any debtor fails to comply with a notice under sub-section (1), the Board shall dismiss the application and may allow against the debtor such costs as the Board considers reasonable and such costs shall be recoverable as a public demand on application made within the prescribed period by a creditor to whom the same is due:

Provided that an order made under sub-section (2) or sub-section (3) may be varied or reversed by the Board on an application for review or by the Appellate Officer on appeal if it is proved to the satisfaction of the Board or of the Appellate Officer that the creditor or debtor or any person referred to in clause (d) of sub-section (1) of section 11, as the case may be, had no knowledge of the notice under sub-section (1) or that he has complied with it or that he had sufficient reason for non-compliance :

Provided further that when a Board has ceased to exist an order made under sub-section (2) or sub-section (3) may be varied or reversed by the Appellate Officer on an application if it is proved to his satisfaction that the creditor or debtor or any person referred to in clause (d) of sub-section (1) of section 11, as the case may be, had no knowledge of the notice under sub-section (1) or that he has complied with it or that he had sufficient reason for non-compliance.

Notice
to persons
in possession
under
a creditor.

²[13A. If in any statement of debt submitted by a creditor under sub-section (1) of section 13 any person who has not been served with a notice under sub-section (2) of section 12 is stated to be in possession of any portion of the immovable property of the

¹These words with ——— brackets were inserted by section 7(c) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

²This section 13A was inserted by section 3, *ibid.*

of 1936.]

(Sections 14—17.)

debtor, the Board shall serve on such person in the prescribed manner a notice requiring him, if he desires to make any representation, to appear before the Board on such date as may be specified in the notice.]

14. (1) 1*

Pro-
duc-
tion of
docu-
ments.

(2) The Board shall mark in the prescribed manner each original document ²[produced in compliance with the notice under sub-section (1) of section 13], keep the copy after verifying its correctness, and return the original to the creditor.

(3) No document relating to a debt regarding which a creditor has failed to submit a statement under sub-section (2) of section 11 or sub-section (1) of section 13, and no document which being in the possession or under the control of the creditor has not been produced by him as required by sub-section (1) ³[of section 13], shall be admissible in evidence against the debtor or his successor in interest in any suit by the creditor or by any person claiming under him for the recovery of the debt to which such document relates unless it is proved to the satisfaction of the Civil Court that there were sufficient reasons for non-production of the document before the Board.

15. Subject to any rules made under this Act, the Board shall call upon the debtor and each creditor to explain his case regarding each debt, and shall use its best endeavours to induce them to arrive at an amicable settlement.

Board to
attempt
amicable
settlement.

16. (1) Subject to rules made under this Act, a Board may exercise all such powers connected with the summoning and examining of parties and witnesses and with the production of documents as are conferred on a Civil Court by the Code of Civil Procedure, 1908.

Act V of
1908.

Power of
Board to
require
atten-
dance of
persons
and pro-
duction of
docu-
ments and
to receive
evidence.

(2) Any person present may be required by a Board to furnish any information or to produce any document then and there in his possession or power.

17. (1) An application under section 8 may be dismissed by the Board, at any stage of its proceedings, in respect of all or any of the debts to which it relates,—

Dismissal
of appli-
cations.

(a) if, for reasons to be stated in writing, the Board does not consider it desirable or practicable to effect a settlement of debts, or

¹Sub-section (1) of section 14 was omitted by section 9(1) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

²These words, figures and brackets within square brackets were substituted for the words "so produced" by section 9(2), *ibid.*

³These words and figures within square brackets were inserted by section 9(2), *ibid.*

(Section 18.)

(b) if, in the opinion of the Board—

- (i) the applicant fails to pursue his application with due diligence, or
- (ii) the debtor is attempting to use the provisions of this Act with a view to defraud any creditor or any person referred to in clause (d) of sub-section (1) of section 11.

(2) An application under section 8 shall be dismissed by the Board, if in its opinion—

- (a) such application includes a claim which is intended to defraud any creditor ; or
- (b) there has been transfer of any property by the debtor within two years previous to the date of such application with a view to defraud any creditor.

Determina-
tion of
amounts.

18. (1) If there is any doubt or dispute as to the existence or amount of any debt, the Board shall decide whether the debt exists and determine its amount :

Provided that a decree of a Civil Court relating to a debt shall be conclusive evidence as to existence and amount of the debt as between the parties to the decree.

(2) Before passing any order under sections 19, 21, or 22 the Board, after considering the statements of debt submitted under section 11 and sub-section (1) of section 13 and ¹[the evidence produced, if any, after having given an opportunity to the parties to appear and be heard,] shall, in accordance with rules made under this Act, determine in respect of each debt the amount of the principal and the amount of the arrears of interest due thereon from the debtor up to the date of such determination.

(3) ^{2*}

(4) When the Board has determined under sub-section (2) the amounts of the principal of a debt due from a debtor and of the arrears of interest due thereon, the decision of the Board in this respect shall not be questioned in any Civil Court or in any manner other than that provided in this Act.

³(5) Notwithstanding anything contained in this Act or in any other law for the time being in force or in any contract, where a creditor has taken possession on any terms whatsoever of any

¹These words within square brackets were substituted for the words "after hearing the parties and considering the evidence produced" by section 10(1) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

²Sub-section (3) of section 18 was omitted by section 10(2), *ibid.*

³These sub-sections (5) and (6) were added by section 10 (3), *ibid.*

of 1936.]

(Section 19.)

immovable property of the debtor as security for, or in lieu of payment of, any portion of the principal of the debt or any portion of the interest thereon, and where the Court has not pronounced a final decree for foreclosure or has not confirmed a sale held in execution of a final decree for the sale of the property, the Board shall, in making the determination under sub-section (2), prepare an account in the prescribed manner of the receipts of the creditor derived from the said property and after deducting the expenses properly incurred by the creditor (of which an account shall similarly be prepared) either for the cultivation or for the management of the said property, shall credit the sum of such receipts in reduction of the amount, if any, from time to time due to the creditor, as interest on the original principal of the debt and, so far as such sum exceeds any interest due, in reduction or discharge, as the case may be, of such original principal.

¹(6) In determining under this section the amount of arrears of interest due—

- (a) the rate of interest taken shall not, notwithstanding anything contained in any contract, exceed the rate recoverable in a suit or other proceedings for the recovery of the interest under any law for the time being in force, and
- (b) where the debt relates to a loan in kind or where there is any stipulation for the payment of interest in kind, the money value of the principal or interest shall, where the circumstances required such calculation, be calculated in the manner prescribed.

19. (1) Subject to rules made under this Act—

Settlement
of debts.

- (a) when any creditor agrees in respect of any debt owing to him to an amicable settlement with the debtor, the Board shall embody such settlement in writing; or
- (b) when creditors to whom there is owing not less than forty *per cent.* of the total debt, agree to an amicable settlement with the debtor, the Board, if it is so empowered under section 7 and if it considers that an offer made by the debtor for the settlement of any debt not included in the amicable settlement is a fair offer which the creditor concerned ought reasonably to accept, may pass an order that the debt to which the offer relates shall be settled in accordance with such offer :

Provided that for the purposes of this clause an offer shall not be considered by the Board to be a fair offer—

- (i) if its terms are less favourable than the terms of any amicable settlement relating to a debt of the same description, or

¹See foot-note 3 on page 14, ante.

¹(Section 19A.)

(ii) 1*

²[(c) when in respect of a debt referred to in sub-section (5) of section 18, the Board, if so empowered under section 7, considers that the debtor has made an offer for the settlement of the debt which the creditor ought reasonably to accept, it may order that the debt be settled in accordance with such offer, and may pass a further order directing the creditor to restore to the debtor by a specified date any immovable property of the debtor which is in his possession as security for or in lieu of payment of any portion of the principal of such debt or any portion of the interest thereon. Such date shall be fixed in consideration of the profits derived and the estimated profits which may be derived by the creditor from such property provided that in no case shall the date be fixed so as to allow the creditor to enjoy possession of the land of a *raiyat* or under-*raiyat* for a period exceeding fifteen years from the commencement of such possession.]

(2) The terms of any settlement of debt under sub-section (1) shall be embodied in an award to be made by the Board.

Explanation.—The words “total debt” mean the sum total of all debts which have been determined under section 18 or regarding the amount of which there is no doubt or dispute.

Delivery
of immov-
able prop-
erty to
debtor.

³[19A. (1) If the creditor does not restore possession of the immovable property to the debtor by the date specified in an award under sub-section (2) of section 19, the debtor may apply to the Certificate-officer exercising jurisdiction in the area in which such property is situated, to be put in possession thereof.

(2) An application under sub-section (1) shall be accompanied by the prescribed process fee, and the Certificate-officer, after giving notice in the prescribed manner to the creditor and to any person who may be in possession under the creditor and after such inquiry as he considers necessary, may direct the creditor to pay to the debtor such compensation as appears to him to be fair and equitable in respect of the period during which the creditor or any person who may be in possession under him retained possession of the property in contravention of the said order of the Board together with costs incidental to the application under this section, and may also pass an order directing the creditor or any person who may be in possession under him to deliver possession of the property to the debtor by a specified date.

¹Clause (ii) of the proviso to clause (b) of sub-section (1) of section 19 was omitted by section 11(a) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

²This clause was inserted by section 11(b), *ibid.*

³This section 19A was inserted by section 12, *ibid.*

of 1936.]

(Sections 20—22.)

Ben. Act
III of 1913.

(3) If possession of the property is not delivered to the debtor by the date specified in an order under sub-section (2), the Certificate-officer shall on the application of the debtor, order delivery of possession to be made by putting in possession of the property the debtor or any other person whom he may appoint to receive delivery on his behalf, and in delivering possession, the Certificate-officer shall have the same powers as under the Bengal Public Demands Recovery Act, 1913.

(4) Any compensation and costs payable under an order under this section shall be recoverable as a public demand.]

20. If any question arises in connection with proceedings before a Board under this Act whether a person is a debtor or not ¹[or whether a liability is a debt or not] the Board shall decide the matter.

Decision by Board as to whether a person is a debtor.

21. Subject to any rules made under this Act, if any creditor does not accept an offer made by the debtor which in the opinion of the Board is fair and such as the creditor ought reasonably to accept, the Board if it is so empowered under section 7, instead of passing any other order which it is competent to pass, may grant to the debtor a certificate in the prescribed form in respect of the debt to which the offer relates,

Grant of certificate in respect of certain debts.

and thereafter, notwithstanding the provision of any law for the time being in force, no Civil Court shall allow to the plaintiff, in any suit for the recovery of such debt any costs in such suit or any interest on the debt after the date of such certificate * * * and no decree for the recovery of such debt shall be executed until all amounts payable under an award in respect of other debts of the debtor have been paid, ²[or until the expiry of such period not exceeding ten years as may be specified in the certificate, whichever is later, or, if the award ceases to subsist under sub-section (5) of section 29, until the award has so ceased to subsist.]

22. (1) When the Board is satisfied that the debts of a debtor are such that they cannot be reduced under the provisions of section 19 to an amount which he will be able to repay within twenty years, and that the debtor is a fit person to be given the benefit of this section, the Board if it is so empowered under section 7,

Adjustment of an insolvent debtor's debts.

¹These words within square brackets were inserted by section 13 of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

²The words, figures and brackets "in excess of simple interest at the rate of six per cent. per annum on the principal of such debt as determined under sub-section (2) of section 18" were omitted by section 14(a), *ibid.*

³These words, figures and brackets within square brackets were substituted for the words, figures and brackets "or such award has ceased to subsist under sub-section (5) of section 29, or, if there is no award, until the expiry of such period not exceeding ten years as may be specified in the certificate" by section 14(b), *ibid.*

(Section 22.)

may, subject to rules made under this Act, and after considering all the circumstances of the debtor, by a written order declare him to be insolvent and may by such order either—

- (a) reduce his debts to such amounts as it considers that he can pay within a period, not exceeding twenty years, to be mentioned in the order, or
- (b) if, for reasons to be recorded in writing, it does not consider the reduction of his debts under clause (a) to be desirable, direct that, subject to the provisions of sub-section (4) and of section 24, all his property shall be sold and the proceeds shall be utilised towards the payment of his debts in such manner as may be specified in the order.

(2) The Certificate-officer shall, on the requisition of the Board in the prescribed form, sell the property of the debtor referred to in clause (b) of sub-section (1) in the manner provided in the Bengal Public Demands Recovery Act, 1913, and the provisions of the said Act regarding sales in execution of certificates shall, subject to the provisions of this Act, apply to such sale.

Ben. Act
III of 1913.

(3) When the Board reduces the debts of an insolvent under clause (a) of sub-section (1) it shall specify in the order what sum he shall pay in each year towards the settlement of the debts as so reduced and in what manner such sums shall be distributed among the creditors :

Provided that the sum to be paid in each year shall be fixed by the Board at an amount which, in its estimation, is likely, in a year of normal harvest, to leave to the insolvent as provision towards his maintenance one-half of the surplus which remains from the value of the produce of his land after paying to the landlord the current rent due for such land.

(4) When the Board directs the sale of an insolvent's property under clause (b) of sub-section (1), it shall set aside, as provision towards his maintenance, not more than one-third of the land held by him in his direct possession exclusive of the land occupied by his dwelling house :

Provided that, even if he holds less than three acres of land in his direct possession, the Board shall thus set aside not less than one acre of the land so held exclusive of the land occupied by his dwelling house :

Provided further that no portion of the immovable property of an insolvent shall be exempted under this sub-section from sale for realisation of arrears of rent.

(5) When the property of the insolvent referred to in clause (b) of sub-section (1) has been sold under sub-section (2) or when he has paid all the sums fixed by the Board under sub-section (3) or when his property has been sold under section 28, the Board

of 1936.]

(Sections 23—25.)

shall make an order of discharge and grant him a certificate of discharge in the prescribed form. Such certificate shall release the insolvent from all debts which were or might have been included in the application under section 8 :

Provided that if within five years of the order declaring the debtor insolvent any property is acquired by, devolves on, or is declared by a Civil Court or is discovered to belong to, the insolvent debtor such property shall, on application made by a creditor to the Board, be available for distribution among the creditors of the debtor, to the extent of their debts, in such manner as the Board may direct.

(6) An order passed by a Board under sub-section (1) shall be embodied in an award to be made by the Board.

[VIII of
1885.

23. The principal of any debt due in respect of arrears of rent or under section 171 of the Bengal Tenancy Act, 1885, shall not be reduced under clause (b) of sub-section (1) of section 19 or under section 22, and the provisions of section 21 shall not apply to the principal of any such debt.

The principal of certain debts not to be reduced.

24. (1) When a debtor is declared insolvent under sub-section (1) of section 22, the Board shall, in the prescribed manner, determine what portion of his immovable property shall be deemed to be the dwelling house of the debtor for the purposes of this Act.

Exemption of certain property of an insolvent debtor from sale.

(2) Such dwelling house shall be exempt from sale under sub-section (2) of section 22 and from sale for the recovery of any unsecured debt under section 28, and notwithstanding anything contained in any other Act, the debtor shall be incompetent to mortgage, charge, lease or alienate the same in any way until he is granted a certificate of discharge under sub-section (5) of section 22.

(3) Notwithstanding anything contained in any other Act, no part of the property of a debtor who has been declared insolvent under sub-section (1) of section 22 shall be exempt from the sale under sub-section (2) of that section or under section 28 except such movable property as shall be prescribed, the immovable property excluded as provision towards his maintenance, and, subject to the provisions of sub-section (2), his dwelling house as determined under sub-section (1).

25. (1) An award shall be in the prescribed form and shall include the following particulars :—

Awards.

(a) a list of the immovable properties of the debtor with particulars of any mortgage, lien or charge subsisting thereon ;

(b) a list of the movable properties of the debtor on which there is any mortgage, lien or charge with particulars of such mortgage, lien or charge ;

(Section 26.)

- (c) details of all debts which have been determined under section 18 or regarding the amount of which there is no doubt or dispute ;
- (d) the amount to be paid to each creditor for each debt owing to him under the terms of an amicable settlement or of an order of the Board under section 19 or section 22 ;
- (e) the manner and the order in which and the times at which the amounts referred to in clause (d) shall be paid :
Provided that the order in which such amounts shall be paid shall be in accordance with any rules made under this Act ;
- (f) the rate of interest, if any, payable on each amount referred to in clause (d) ;
- (g) an order that all the properties mentioned in the list referred to in clause (a) or clause (b) except such properties as are exempt from sale shall, subject to any mortgage, lien or charge subsisting thereon, be security for the amounts payable under the award.
- ¹(h) the date, if any, by which possession of immovable property is to be restored to the debtor under the terms of an award under sub-section (2) of section 19.

(2) At a place and time of which notice shall be given to the parties, in the prescribed manner the award shall be explained to the parties present and shall be signed by the Board ; but the validity of an award shall not be affected by the absence of any of the parties.

(3) From the date of the signing of the award under sub-section (2) it shall, in supersession of all previous decisions of a Civil Court in respect of the debts mentioned in it, be binding on the debtor and his creditors and the successors in interest of such debtor and creditors.

Special
provision
for arrears
of rent.

26. Notwithstanding anything contained in this or any other Act—

- (a) if any rent due for any land mentioned in the list referred to in clause (a) of sub-section (1) of section 25 falls into arrears, the landlord may include in a suit for the recovery of such arrears the amount of arrears of rent payable under such award;

¹This clause (h) was inserted by section 15 of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

of 1885.]

(Sections 27, 28.)

Ben. Act
III of 1913.
VIII of
1885.

(b) if any land referred to in clause (a) is advertised for sale in execution of a decree, or of a certificate under the Bengal Public Demands Recovery Act, 1913, for arrears of rent, the provisions of section 171 of the Bengal Tenancy Act, 1885, shall not apply, but any person whose interests are affected may pay into Court the amount requisite to prevent such sale, and thereupon the amount so paid, together with interest at the prescribed rate which shall not exceed twelve *per centum per annum*, shall be included by the Board in the award in accordance with rules made under this Act and such amount shall take priority of every other debt payable under the award and of every other charge on the land other than an arrear of rent.

27. (1) When an award is made as regards any debt which is secured by mortgage, lien or charge on any immovable property of a debtor such mortgage, lien or charge shall subsist to the extent of the amount payable in respect of such debt under the award until such amount has been paid or the property has been sold for the satisfaction of such debt or the debtor has been granted a certificate of discharge under sub-section (5) of section 22 :

Existing mortgages, etc., to subsist.

[Provided that where an award under sub-section (2) of section 19 directs the restoration of possession of immovable property to the debtor, the mortgage, charge or lien shall be subject to such modification as to the period of possession as may be contained in the award.]

(2) Any mortgage, lien or charge upon any immovable property securing a debt on account of which any amount is payable under a decree of a Civil Court shall cease to subsist when such property is sold under the provisions of section 28 or sub-section (4) of section 29.

28. (1) If by the date fixed the debtor fails to pay any amount payable under an award such amount shall be recoverable as a public demand on application made within the prescribed period by a creditor to whom the amount is due.

Recovery of amounts included in an award.

If the creditor does not so apply such amount shall, for the purposes of clause (iii) of section 35, be deemed to be a debt incurred by the debtor after the date of the signing of the award.

(2) Subject to any rules made under this Act, the Certificate-officer, if satisfied that there is good reason for the failure to pay by the fixed date, may allow time to the debtor within which to pay any amount due. If the Certificate-officer thus allows time, he may, if he thinks fit, further direct that a similar period of time shall be given to the debtor after the time fixed in the award for

¹This proviso was added by section 16 of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

(Section 29.)

payment of any other amount payable thereunder, within which to make such other payment, and the award shall be deemed to be modified accordingly.

(3) If the Certificate-officer does not allow time under sub-section (2), or if the debtor fails to pay within the time allowed, the Certificate-officer shall proceed to recover the amount in the manner provided in the Bengal Public Demands Recovery Act, 1913 :

Ben. Act
III of 1913.

Provided that if such debtor has been declared insolvent under section 22, the Certificate-officer after allowing such time, if any, as he thinks fit, shall, forthwith, subject to the provisions of sub-section (4) of section 22 and section 24, sell such portion of the property of the debtor as will be sufficient to pay all the amounts payable whether under the award or under sub-section (1) of section 29.

(4) Subject to the proviso to sub-section (3), if the Certificate-officer fails to recover the full amount in respect of which an application has been made under sub-section (1) by sale of the movable property or agricultural produce of the debtor, he shall sell such portion of the immovable property of the debtor as will be sufficient to pay all amounts payable whether under the award or under sub-section (1) of section 29 or under any decree which has, to the knowledge of the Certificate-officer, been passed by a Civil Court in respect of a debt of which details are included in the award under clause (c) of sub-section (1) of section 25.

(5) When the Certificate-officer sells the immovable property of a debtor under sub-section (2) of section 22 or under this section he shall keep a separate account of the proceeds realised from the sale of any portion of such property upon which a mortgage, lien or charge is shown as subsisting in the list included in the award under clause (a) of sub-section (1) of section 25.

(6) If any debt in respect of which no amount is payable under the award is secured by a mortgage, lien or charge shown in such lists the Certificate-officer shall sell the immovable property subject to such mortgage, lien or charge, unless a decree of a Civil Court for the recovery of the debt is outstanding in respect of such property. If such a decree is outstanding the Certificate-officer shall distribute the sale proceeds in accordance with the provisions of clause (a) of sub-section (2) of section 29.

Distribu-
tion of
sale pro-
ceeds.

29. (1) When a Certificate-officer has sold property of a debtor under sub-section (2) of section 22 or under section 28 he shall first pay from the proceeds of the sale any amount payable as costs of sale in execution of the certificate and next—

(a) any amount payable for arrears of rent under the award and as arrears of rent which may have fallen due between the date of determination of the debt under sub-section (2) of section 18 and the date of confirmation of the sale ; and

of 1936.]

(Section 29.)

Ben. Act
III of
1913.

- (b) any amount due to the ¹[State Government] included in a certificate issued under the Bengal Public Demands Recovery Act, 1913.

(2) After making the payments under sub-section (1), if any, the Certificate-officer shall proceed as follows :—

IV of
1882.

- (a) he shall, in the first instance, apply the surplus of the proceeds realised from the sale of any portion of the immovable property for which he has kept a separate account under the provisions of sub-section (5) of section 28 to the payment of any amounts payable under the award or under a decree of a Civil Court to creditors on account of debts which are secured by a mortgage, lien or charge upon such property in order of priority determined in accordance with the provisions of the Transfer of Property Act, 1882, and if such surplus is insufficient to meet such payments the balance of such amounts shall, unless the debt has been extinguished by such sale, rank equally with unsecured debts :

Provided that if there is any dispute or doubt as to the priority of payment of such debts the Certificate-officer shall refer the matter to the Appellate Officer who shall determine the same according to the provisions of the aforesaid Act ;

- (b) when there is a surplus after payment of the amounts referred to in clause (a), the Certificate-officer shall apply the sum of such surplus and of any proceeds realised from the sale of other property of the debtor to the payment of any other amounts payable under the award,

and if such sum is insufficient to meet such payment such other amounts and any amount payable on account of an unsecured debt for the recovery of which a decree has been passed by a Civil Court, and of which details are given in the award under clause (c) of sub-section (1) of section 25, shall rank equally between themselves for purposes of payment :

Provided that if any instalment has been paid under the award, for the year when an instalment fell due for the recovery of which application has been made under sub-section (1) of section 28, any instalment which fell due in that year, but which has not been paid, shall be given priority ;

- (c) any surplus remaining after payment of the creditors in accordance with the foregoing provisions of this section shall be paid by the Certificate-officer to the debtor.

¹See footnote 2 on page 4, ante.

(Sections 30—32.)

(3) The proceedings of a Certificate-officer under this section shall be in accordance with rules made under this Act.

(4) Notwithstanding anything contained in the Bengal Public Demands Recovery Act, 1913, if any amount payable under an award in respect of a debt secured by a mortgage, lien or charge on an immovable property of a debtor which is exempted from sale under the said Act cannot be recovered as a public demand, the Certificate-officer shall recover such amount by the sale of such immovable property and shall pay to the debtor the balance (if any) remaining after payment of such amount. The procedure under the Bengal Public Demands Recovery Act, 1913, shall be applicable to such sale. Ben. Act
III of
1913.

(5) If the Certificate-officer fails to recover as a public demand or under the provisions of sub-section (4) any amount payable under the award, he shall certify that it is irrecoverable and thereupon the award shall cease to subsist and any amount that was payable under it shall be recoverable within three years from the date on which the award ceased to subsist as if a decree of the Civil Court had been passed for its payment on such date :

Provided that the Certificate-officer, instead of at once certifying any part of such amount to be irrecoverable, may make a report to the Board which may pass an order declaring that the debtor is insolvent and thereupon the provisions of sub-section (5) of section 22 shall as far as possible apply to such insolvent.

Distribu-
tion of
balance
of sale
proceeds
when
land is
sold in
execution
of a
decree or
certificate
for
arrears
of rent.

30. Notwithstanding anything in any other Act, when any land mentioned in the list referred to in clause (a) of sub-section (1) of section 25 is sold in execution of a decree, or of a certificate under the Bengal Public Demands Recovery Act, 1913, for arrears of rent, the balance of the sale proceeds which remains after the payment of the amounts referred to in clauses (a), (b) and (c) of sub-section (1) of section 169 of the Bengal Tenancy Act, 1885, or in clauses (a), (b) and (c) of sub-section (1) of section 26 of the Bengal Public Demands Recovery Act, 1913, shall be paid to the Certificate-officer, or retained by him as the case may be, for distribution in the manner provided in section 29 of this Act. VIII of
1885.

Settle-
ment of
debts of a
member
of a co-
operative
society.

31. No settlement under this Act of the debts of a member of a co-operative society registered under the Co-operative Societies Act, 1912, who owes any amount to such society, shall be valid without the previous approval in writing of a prescribed authority. II of
1912.

Stay of
proceed-
ings before
the Board.

32. If a debtor informs the Board at the earliest opportunity that the decree referred to in the proviso to sub-section (1) of section 18 was obtained ~~ex parte~~ and that he intends to apply to the Civil Court to set it aside the Board may stay further proceedings for such time as it may consider necessary to enable the debtor to set aside the decree.

of 1936.]

(Sections 33—35.)

33. Except as provided in this Act, no Civil or Revenue Court shall entertain a suit, application or proceeding against the debtor in respect of—

Bar to suits and proceedings in Civil and Revenue Courts.

- (a) any debt included in an application under section 8¹[or section 37A] or in a statement under sub-section (1) of section 13, proceedings in connection with which are pending before a Board²[or an Appellate Officer or a District Judge or an Additional District Judge]; or
- (b) any debt for which any amount is payable under an award, except in accordance with the provisions of sub-section (5) of section 29.

³34. When an application under section 8 or a statement under sub-section (1) of section 13 includes any debt in respect of which a suit or other proceeding is pending before a Civil or Revenue Court, or when an Appellate Officer entertains an appeal or a District Judge or an Additional District Judge entertains an application for revision, relating to such a debt, the Board or the Appellate Officer or the District Judge or the Additional District Judge, as the case may be, shall give notice thereof to such court in the prescribed manner, and thereupon the suit or the proceeding shall be stayed until the Board has either dismissed the application in respect of such debt or made an award thereon or until the Appellate Officer has disposed of such appeal or the District Judge or the Additional District Judge has disposed of such application for revision, and if the Board or the Appellate Officer or District Judge or Additional District Judge includes any part of such debt in clause (d) of sub-section (1) of section 25 in the award or decides that the debt does not exist the suit or proceeding shall abate so far as it relates to such debt.

Stay and abatement of suits and proceedings.

Explanation.—For the purpose of this section an execution proceeding for the sale of any property shall be deemed to be pending and the debt in respect of which the sale takes place shall be deemed to exist until such sale becomes absolute.]

35. Notwithstanding anything contained in any Act, no decree of a Civil Court or certificate under the Bengal Public Demands Recovery Act, 1913, shall be executed—

Bar to execution of certain decrees and certificates.

- (i) for the recovery of a debt included in an application under section 8⁴[or under sub-section (2) of section 37A] or in a statement under sub-section (1) of section 13, until—

- (a) the application has been dismissed by the Board in respect of such debt; or

Ben. Act III of 1913.

¹These words, figures and letter within square brackets were inserted by s. 3 of the Bengal Agricultural Debtors (Amendment) Act, 1942 (Ben. Act II of 1942).

²These words within square brackets were inserted by section 17 of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

³This section was substituted for section 34 by section 18, *ibid*.

⁴These words, figures and letter within square brackets were inserted by s. 4 of the Bengal Agricultural Debtors (Amendment) Act, 1942 (Ben. Act II of 1942).

(Sections 36, 37.)

- (b) an award in which such debt is included has ceased to subsist under sub-section (5) of section 29 ;
- (ii) except as provided in clause (a) of sub-section (1) of section 29, for the recovery of arrears of rent which became due from a debtor ¹[on or after the first day of January, 1940, or] after the date of an application under section 8 in respect of his debts, unless notice of such decree or certificate has been given to the Board in the prescribed manner, and three months have elapsed since such notice was given ;
- (iii) for the recovery of ²[any sum in respect of any loan other than a loan recoverable as a public demand] incurred by a debtor ³[on or after the first day of January, 1940, or] after the date of an application under section 8 in respect of his debts, until all the amounts payable under the award have been paid or such award has ceased to subsist under sub-section (5) of section 29.

Certain
decrees
to be
treated as
nullities.

36. Notwithstanding anything contained in any Act, any decree of a Civil Court passed in regard to a debt after the date of an application under section 8 shall be treated as a nullity in so far as—

- (a) it is inconsistent with any order passed by a Board under sub-section (2) of section 13 regarding any debt or with any determination by the Board under section 18 of the principal and the arrears of interest of any debt included in a subsisting award ; or
- (b) it relates to a debt the documents in respect of which being in the possession or under the control of the creditor have not been produced before the Board and marked by the Board as required by section 14 unless it is proved to the satisfaction of the Civil Court that there were sufficient reasons for non-production of the documents before the Board.

Attach-
ment of
debtor's
immov-
able
property.

37. After receipt of an application under section 8 the Board may attach the immovable property of the debtor in the prescribed manner and thereupon such property shall be deemed to be under attachment under the provisions of the Code of Civil Procedure, 1908, until such attachment is withdrawn or cancelled by the Board.

Act V
of 1908.

¹These words and figures within square brackets were inserted by section 19(1) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

²These words within square brackets were substituted for the words "a debt" by section 19(2)(a), *ibid*.

³These words and figures within square brackets were inserted by section 19(2)(b), *ibid*.

of 1936.]

(Section 37A.)

Ben. Act
III of
1913.

37A. (1) When any immovable property of any person has been sold after the twelfth day of August, 1935, in execution of a decree of a Civil Court or a certificate under the Bengal Public Demands Recovery Act, 1913, relating to a debt, other than a certificate for the recovery of any amount payable under an award, such person or his heir, executor or administrator may, notwithstanding anything contained in this Act or in any other law for the time being in force or in any agreement, apply for relief under this section, if the following conditions are fulfilled, namely :—

Applica-
tions for
restora-
tion^a to
possession
of immov-
able
property
sold in
decrees or
certificates
for debt.

- (a) if, on the date of the sale, such person was a debtor,
- (b) if the sale was held—
 - (i) before an appointment was made under sub-section (2) of section 3 in relation to the Board established for the local area within which such person ordinarily resided at the time of the sale, or
 - (ii) notwithstanding the issue by such Board of a notice under section 34, or
 - (iii) before the commencement of the Bengal Agricultural Debtors (Amendment) Act, 1940, in the case of a debt for arrears of rent in respect of which such person was liable jointly with any other person, and
- (c) if the property sold was in the possession of the decree-holder on or after the twentieth day of December, 1939, or was alienated by the decree-holder before that date in any manner otherwise than by—
 - (i) a *bona fide* gift by a *heba* whether by registered instrument or not, or
 - (ii) any other *bona fide* gift by registered instrument, or
 - (iii) a *bona fide* lease for valuable consideration whether by registered instrument or not, or
 - (iv) any other *bona fide* transfer for valuable consideration (excepting a mortgage) by registered instrument.

Ben. Act
VIII of
1940.

(2) The application referred to in sub-section (1) shall be made to the Board established for the local area within which the applicant ordinarily resides and within one year from the date of the commencement of the Bengal Agricultural Debtors (Amendment) Act, 1942, or from the date on which possession of the property was delivered to the decree-holder, whichever is later, notwithstanding that on the date of such application the period of ^a[seven years] from the establishment of the first Board in such local area has already expired ; and the Board shall first determine whether the application fulfils the conditions specified in that sub-section and whether it can be entertained.

^aThis new section was inserted by s. 5 of the Bengal Agricultural Debtors (Amendment) Act, 1942 (Ben. Act II of 1942).

^aThese words within square brackets were substituted for the words " five years " by s. 3 of the Bengal Agricultural Debtors (Second Amendment) Act, 1942 (Ben. Act VIII of 1942).

(Section 37A.)

(3) No Board shall entertain an application under sub-section (2) if such application relates to a debt in respect of which a Civil Court has previously entertained a suit instituted or an application made under the provisions of the Bengal Money-lenders Act, 1940 ; and no Civil Court shall entertain a suit instituted or an application made under the provisions of that Act if such suit or application relates to a debt in respect of which a Board has previously entertained an application made under the provisions of this section.

Ben. Act
X of 1940.

(4) If the Board decides that an application made under sub-section (2) fulfils the conditions specified in sub-section (1) and can be entertained by it, and if after an opportunity has been allowed in the manner prescribed, the applicant, the decree-holder and the landlord of the applicant in respect of the property sold in the case where the decree-holder is not such landlord, or where the Board finds that the property sold is subject to any *bona fide* mortgage executed by the decree-holder before the twentieth day of December, 1939, the applicant, the decree-holder, such landlord and such mortgagee do not effect an amicable settlement of the debt within such period as the Board may allow, the Board shall, in such manner as may be prescribed, estimate the average annual gross receipts deemed to have been derivable from the property sold during the period beginning on the first day of January, 1934, and ending on the thirty-first day of December, 1938.

(5) After making the estimate referred to in sub-section (4), the Board shall make an award directing the applicant—

- (a) to pay annually in cash to the decree-holder one-half of the value of such average annual gross receipts until the debt is extinguished or until twenty years have expired from the date of the award, whichever is earlier, and
- (b) in addition, to pay in cash together with each such annual payment as long as such payment continues any amount payable to the landlord of the applicant as current annual rent of the property sold :

Provided that if the property sold is subject to any *bona fide* mortgage executed by the decree-holder before the twentieth day of December, 1939, the Board shall in the said award instead of directing the payment referred to in clause (a), direct—

- (i) that the applicant shall until the principal of the said mortgage, in so far as such principal does not exceed the debt referred to in clause (a) of sub-section (7), is paid off or until twenty years have expired from the date of the said award, whichever is earlier, pay to such mortgagee annually and in cash one-half of the value of the average annual gross receipts referred to in clause (a) of this sub-section, and

of 1936.]

(Section 37A.)

- (ii) that the applicant shall, if after such principal of the said mortgage is paid off anything on account of the debt referred to in clause (a) of sub-section (7) is still outstanding and twenty years have not expired from the date of the said award, continue to pay the amount referred to in clause (a) of this sub-section to the decree-holder until the debt is extinguished or until twenty years have expired from the date of the said award, whichever is earlier.

Explanation.—For the purposes of this proviso any payment made to the mortgagee under clause (i) of this proviso shall be deemed to be made towards the debt referred to in clause (a) of sub-section (7).

(6) The Board shall in the case where any improvement has been effected *bona fide* by the decree-holder before the twentieth day of December, 1939, by the erection of a building whether of masonry, bricks, stone or any other material whatsoever or by the construction of any tank or well on the property sold or on any portion thereof, allow compensation to the decree-holder for any loss caused to him by the restoration of the possession of such property to the debtor and shall, before making an award under sub-section (5), determine the amount of such compensation in the manner prescribed.

(7) For the purposes of an award made under sub-section (5)—

(a) the debt shall be deemed to be—

- (i) the amount of the decree or certificate in execution of which the property was sold together with all costs of such execution including the cost of delivery of possession of the property to the decree-holder calculated in the manner prescribed, and

- (ii) in addition, the compensation, if any, allowed under sub-section (6) and in the case of a decree or certificate for arrears of rent, the amount of the rent, if any, payable to the decree-holder in respect of the property between the date of the institution of the suit or the filing of the certificate and the date on which the decree-holder secured possession of the property,

after deducting therefrom, in respect of each year during which the decree-holder remained in possession of the property, an amount equal to half the average annual gross receipts estimated under sub-section (4), and a proportionate amount in respect of any portion of any such year; and

- (b) in the case to which the proviso to sub-section (5) applies, the debt shall include so much of the principal of the mortgage referred to in that proviso as is payable under clause (i) of that proviso to the mortgagee;

and after such an award has been made, the applicant shall be deemed to be a debtor.

(Sections 38, 39.)

(8) The debtor may present a copy of the award made under sub-section (5) to the Civil Court or Certificate-officer at whose order the property was sold, and such Court or Certificate-officer shall thereupon direct that the sale be set aside, that the debtor together with any person who was in possession of the property sold or any part thereof at the time of delivery of possession of such property to the decree-holder as an under-*raiyat* of the debtor and who has been ejected therefrom by reason of such sale be restored to possession of the property with effect from the first day of *Baisakh* next following or the first day of *Kartik* next following, whichever is earlier, and that any person who is in possession of the property other than a person who was in possession of the property or part thereof as an under-*raiyat* of the debtor at the time of delivery of possession of such property to the decree-holder shall be ejected therefrom with effect from that date.

(9) A debtor who has been restored to possession of any property under sub-section (8) shall not, so long as there remains unpaid any sum payable under an award made under sub-section (5) or until the expiration of twenty years from the date of such award, whichever is earlier, alienate by sale, lease, gift or other form of transfer, or create any charge upon, such property or any portion thereof and, notwithstanding anything contained in any other law, any alienation or charge so made shall be void and of no effect.

(10) The provisions of sections 28 and 29 shall, so far as may be, be applicable in the case where the debtor fails to pay by the date fixed any sum payable under an award made under sub-section (5).

(11) When the debt is extinguished, or when twenty years have expired from the date of the award made under sub-section (5), or when such award ceases to subsist under sub-section (5) of section 29, whichever is earlier, the decree or certificate in execution of which the property was sold shall be deemed to have been fully satisfied.

(12) In this section the expression 'decree-holder' includes the certificate-holder and any person to whom any interest in the decree or certificate is transferred by assignment in writing or by operation of law.

Bar to
appeal or
revision.

38. No appeal or application for revision shall lie against any decision or order of or award by a Board except as provided in this Act.

Transfer of
applica-
tions from
one Board
to another.

39. (1) The [State Government] may authorise the Collector, subject to rules made under this Act, to transfer from one Board to another, for disposal, applications made under section 8.

(2) A Board to which an application is transferred under sub-section (1) may continue the proceedings in connection with the application from the stage which has been reached when the application is transferred.

of 1933.]

(Section 40.)

40. (1) An appeal may be made in the prescribed manner **Appella.** to an Appellate Officer to be appointed by the ¹[State Government] against—

- (a) any decision or order of a Board under this Act or of a Certificate-officer under sub-section (2) of section 28 or section 29,
- (b) any award,
- (c) the grant of a certificate under section 21, or
- (d) any failure on the part of a Board to perform its functions under this Act or any abuse by a Board of its powers:

-[Provided that an appeal against any order under section 21, section 22 or section 29, and no other appeal shall be made to an Appellate Officer appointed under this section who has had such judicial experience as may be prescribed.]

(2) An appeal under sub-section (1) shall lie if made within thirty days of the date of the decision, order, award or certificate referred to in that sub-section.

(3) The ¹[State Government] may make rules regarding the procedure to be followed by the Appellate Officer, and for the control and inspection of his work.

(4) The Appellate Officer may after giving the appellant an opportunity of being heard reject an appeal summarily if he considers that there is no sufficient ground for interfering.

³[(4A) The Appellate Officer may stay any order directing the restoration of possession of immovable property to a debtor under clause (c) of sub-section (1) of section 19 pending the disposal of an appeal preferred to him against such order.]

(5) If the Appellate Officer does not reject the appeal summarily, he shall hear the parties, if they appear, and consider any reasons which the Board may submit in regard to the grounds of such appeal, and may then either confirm or modify the decision or order of the Board or direct the Board to take such action as he thinks fit.

⁴[(6) Subject to the provisions of section 40A the orders of the Appellate Officer shall be final.]

(7) An appeal for the purpose of this section includes an application for revision.

(8) No appeal shall lie against a decision or order passed by a Board with the consent of the debtor and the creditor.

¹See footnote 2 on page 4, *ante*.

²This proviso was substituted for the existing proviso to sub-section (1) by section 20(1) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

³This sub-section (4A) was inserted by section 20(2), *ibid*.

⁴This sub-section was substituted for the existing sub-section (6) by section 20(3), *ibid*.

(Sections 40A—43.)

Revision.

¹[40A. (1) An application may be made in the prescribed form for revision by the District Judge of an order made by an Appellate Officer.

(2) An application under sub-section (1) shall lie if made within thirty days of the date of the order referred to in that sub-section.

(3) Every such application shall be made to the Appellate Officer who shall forward to the District Judge the record of the case, the application and any explanation which he may desire to offer in respect of the application.

(4) The District Judge shall consider such papers as may be forwarded to him by the Appellate Officer, but shall not hear the parties or any person appearing on their behalf.

(5) If the District Judge does not reject the application, he may, if he is satisfied that there has been a substantial failure of justice by reason of any illegality or irregularity contained in the order of the Appellate Officer, or for any other sufficient cause either modify or reverse the order or any portion thereof:

Provided that the District Judge may transfer to an Additional District Judge subordinate to him any papers forwarded to him by an Appellate Officer under sub-section (3) and such Additional District Judge shall in respect of the applications so transferred exercise the same powers and perform the same duties as those respectively conferred and imposed upon the District Judge under this section.]

41. [Power of Appellate Officer to transfer application.]
Omitted by section 22 of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

Reference
to Appel-
late Officer.

42. Subject to rules made under this Act, a Board may, if it thinks necessary, make a reference to the Appellate Officer stating the question upon which his opinion, advice or direction is required and the Appellate Officer shall give his opinion, advice or direction, as the case may be, thereon as soon as possible.

Control
over
Board.

43. (1) A Board shall, in all proceedings under this Act, be subject to the control of the ²[State Government].

(2) Any person appointed by the ²[State Government] in this behalf may inspect or cause to be inspected any property, books or documents in the possession or under the control of the Board and require the Board to furnish such statements, accounts, reports, copies of documents or such other information relating to the proceedings and duties of the Board, as he thinks fit to call for.

¹This section 40A was inserted by section 21 of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

²See footnote 2 on page 4, ante.

Bengal Agricultural Debtors Act, 1936.

of 1936.]

(Sections 44—46A.)

44. Subject to any rules made under this Act—

Power of Board to review its order.

(a) a Board may, on an application made by any person interested ¹[or of its own motion], review any decision or order passed by it and pass such order in reference thereto as it thinks fit,

(b) an Appellate Officer may, on an application made by any person interested ²[or of his own motion], review any decision or order passed by him or his predecessor and pass such order in reference thereto as he thinks fit :

Provided that no order shall be varied or reversed unless an opportunity has been given to the person interested to appear and be heard in support of such order.

45. (1) Except as otherwise provided in this Act, the provisions of—

Certain Acts not to apply to the proceedings under this Act.

I of 1872.
Act V of 1908.

(a) the Indian Evidence Act, 1872, and

(b) the Code of Civil Procedure, 1908,

shall not apply to any proceedings before a Board.

(2) The procedure to be followed by a Board in any proceedings before it shall, subject to the provisions of this Act, be in accordance with rules prescribed under this Act.

XVIII of 1870.

46. ³[(1)] Subject to any rules made under this Act, no legal practitioner as defined in the Legal Practitioners Act, 1879, shall represent any party in any proceedings before a Board, nor shall any other agent, without the permission of the Board, represent any party in any such proceedings.

Representation of party before a Board.

³(2) Notwithstanding anything contained in sub-section (1) no person whose name is included in a list of touts prepared and published under sub-section (1) of section 46A shall be permitted to appear as an agent of any party before a Board.

46A. (1) Every Subdivisional Magistrate may, as regards the Boards within his own jurisdiction, frame and publish lists of persons proved to his satisfaction, by evidence of general repute or otherwise, to be touts, and may, from time to time, alter and amend such lists.

Power to frame and publish lists of touts.

(2) No person's name shall be included in any such list until he shall have had an opportunity of showing cause against such inclusion.

¹These words within square brackets were inserted by section 23(a) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act V of 1940).

²These words within square brackets were inserted by section 23(b), *ibid.*

³Section 46 was re-numbered as sub-section (1) of section 46 and sub-section (2) was added by s. 18 of the Bengal Touts Act, 1942 (Ben. Act V of 1942).

⁴These new sections 46A to 46F were inserted by s. 19, *ibid.*

(Sections 46B—46F.)

(3) Where the name of any person is included in a list framed and published under this section, such person may, within thirty days of the publication of the list in which his name first appears apply in writing to the District Magistrate for the removal of his name from such list; and the orders of the District Magistrate, passed after such inquiry (if any) as he considers necessary, on such application shall be final.

Report to Subdivisional Magistrate against suspected touts.

146B. A Board may report to the Subdivisional Magistrate the name of any person alleged or suspected to be a tout for inclusion in the list referred to in sub-section (1) of section 46A, and the Subdivisional Magistrate may take such action on the report as he thinks fit.

Hanging up of lists of touts in Board's office.

146C. A copy of a list of touts referred to in sub-section (1) of section 46A shall be kept hung up in the office of every Board in the subdivision to which the same relates.

Presumption as to touts.

146D. Every person whose name is included in a list of touts referred to in sub-section (1) of section 46A, if found within the precincts of the office of any Board without a written permission from that Board, shall be deemed to be acting as a tout for the purposes of section 46F:

Provided that this section shall not apply where such person is a party to a proceeding before such Board or has been directed to appear by any process of such Board.

Complaint to Subdivisional Magistrate against touts found within precincts of Board's office.

146E. Any Board may make a complaint in writing to the Subdivisional Magistrate regarding any person included in a list of touts referred to in sub-section (1) of section 46A, who enters or is found within the precincts of the office of such Board, and the Subdivisional Magistrate may thereupon take such action as he thinks fit.

Penalty.

146F. Any person who acts as a tout whilst his name is included in a list of touts referred to in sub-section (1) of section 46A shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees or with both.

of 1936.]

(Sections 47—53.)

XVI of
1908.

47. (1) Every award and every certificate granted under section 21 or sub-section (5) of section 22, shall be registered under the Indian Registration Act, 1908, by the Chairman of the Board in such manner and within such period as may be prescribed. Registration of awards and certificates.

(2) For the purpose of the registration under sub-section (1) of an award or a certificate the Chairman shall be deemed to be an officer of Government empowered to execute such instrument within the meaning of section 88 of the Indian Registration Act, 1908.

48. A copy of any order made by a Board under sub-section (2) of section 13, and a copy of any award shall be published in such manner as may be prescribed by the ¹[State Government]. Publication of orders and awards.

Act XLV
of 1900.

49. The Chairman and the other members of a Board shall be deemed to be public servants within the meaning of the Indian Penal Code. Chairman and members of Boards deemed to be public servants.

50.^a All proceedings under this Act shall be deemed to be judicial proceedings within the meaning of section 228 of the Indian Penal Code. Proceedings deemed to be judicial proceedings.

51. No suit, prosecution or legal proceeding whatever shall lie against any Chairman or other member of a Board, Appellate Officer or Certificate-officer in respect of anything in good faith done or intended to be done under this Act. Indemnity.

52. Notwithstanding anything contained in any other Act when the period of limitation is calculated for any application, suit or appeal regarding a debt which has been the subject of any proceedings under this Act, the time during which such proceedings continued and the time during which the person interested in such debt was debarred by any provision of this Act from making or instituting the application, suit or appeal, or executing the decree in question, as the case may be, shall be excluded. Extension of period of limitation.

53. The right to receive any amount payable under an award shall be assignable in the prescribed manner. Negotiability of awarded amounts.

¹See footnote 2 on page 4, ante.

(Sections 54, 55.)

• Penalties.

54. (1) Whoever—

- (a) intentionally makes any false statement in writing or makes any false statement which has been recorded whether on oath or not before any Board or an Appellate Officer, in any proceeding under this Act;
- (b) intentionally produces before a Board any false copy or translation of a document;
- (c) falsely personates another and in such assumed character produces any document or makes any admission or statement or does any other act in any proceeding under this Act; or
- (d) abets any act punishable under this section;

shall, on conviction, be liable to imprisonment for a term which may extend to three years or to fine or to both.

(2) No prosecution for any offence under this section may be commenced except by, or with the permission of, the Collector.

Power to make rules.

55. (1) The ¹[State Government] may make ²rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power the ¹[State Government] may make rules to provide for all or any of the following matters, namely :—

- (a) the maximum amount of debt which can be dealt with under the provisions of this Act;
- ³(b) the fees to be paid for anything done under this Act and the persons by whom and the manner in which such fees shall be paid;
- (c) the allowances, if any, to be paid to the Appellate Officer, the Chairman and other members of a Board;
- (d) the office establishment of a Board, the pay, allowances and conditions of service of such establishment;
- (e) the procedure of a Board, and the quorum for a meeting of a Board;
- (f) the forms of application under section 8, of statements of debt under section 11, of awards, of certificates under section 21, of requisitions under sub-section (2) of section 22, and of certificates of discharge under sub-section (5) of section 22;
- (g) the transfer of applications under sub-section (3) of section 8 or sub-section (1) of section 39, and disposal of applications under sub-section (3) of section 8;

¹See footnote 2 on page 4, ante.

²For rules made under this section, see notification No. 9187L.R., dated the 26th June, 1936, published in the *Calcutta Gazette*, dated the 2nd July, 1936, Part I, page 1575.

³For rule under this clause, see notification No. 9188L.R., dated the 26th June, 1936, published in the *Calcutta Gazette* of the 2nd July, 1936, Part I, page 1625.

of 1936.]

(Section 55.)

- (h) the manner of signing and verification of applications under section 8;
- (i) the manner of giving notice under sub-section (2) of section 12, sub-section (1) of section 13, ¹[section 13A, sub-section (2) of section 19A] and sub-section (2) of section 25;
- (j) the marking of original documents produced under sub-section (2) of section 14;
- (k) the amicable settlement by a Board of debts under section 15;
- (l) the summoning and examination by a Board of parties and their witnesses, and the production of documents under sub-section (1) of section 16;
- (m) the determination by a Board under sub-section (2) of section 18 of the amount of the principal of a debt and the amount of interest due thereon;
- ²[ma) the preparation of accounts of receipts and expenses of a creditor under sub-section (5) of section 18;
- (mb) the calculation of the money value of principal or interest referred to in sub-section (6) of section 18;]
- (n) the settlement of debts by a Board under section 19;
- (o) the grant of a certificate under section 21;
- (p) the declaration by a Board under sub-section (1) of section 22 that a debtor is insolvent, the sale of his property and the reduction of his debts;
- (q) the determination of a portion of the immovable property of a debtor as his dwelling house under sub-section (1) of section 24;
- (r) the movable property of an insolvent debtor which shall be exempt under sub-section (3) of section 24 from sale;
- (s) the order of payment of the amount referred to in clause (d) of sub-section (1) of section 25;
- (t) the period within which an application under sub-section (3) of section 13 and sub-section (1) of section 28 shall be made;
- (u) the grant of time under sub-section (2) of section 28 for payment of the amount due;

¹These words, letters, figures and brackets within square brackets were inserted by section 24(a) of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

²These clauses (ma) and (mb) were inserted by section 24(b), *ibid.*

(Section 55.)

- (v) the distribution of sale proceeds and the proceedings of a Certificate-officer under section 29;
- (w) the authorities whose approval is required under section 31;
- (x) the manner of giving notice under section 34 and under section 35;
- (y) the manner of attachment of immovable property under section 37;
- ¹(ya) the forms of application under sub-section (2) of section 37A, and the manner of making the estimate referred to in sub-section (4) of that section;
- ¹(yb) the manner in which an opportunity shall be allowed to effect an amicable settlement under sub-section (4) of section 37A;
- ¹(yc) the manner in which the amount of compensation shall be determined under sub-section (6) of section 37A;
- ¹(yd) the manner of calculation of costs referred to in sub-clause (i) of clause (a) of sub-section (7) of section 37A;
- (z) the transfer and disposal of applications under section 39;
- (za) the manner of making an appeal under sub-section (1) of section 40;
- (zb) the judicial experience required in the case of certain Appellate Officer under proviso to sub-section (1) of section 40;
- (zc) the procedure of an Appellate Officer and the control and inspection of his work under sub-section (3) of section 40;
- (zd) the manner of review under section 44 of a decision or order passed by a Board or an Appellate Officer;
- (ze) the representation of a party in proceedings before a Board;
- (zf) the manner in which and the period within which awards and certificates shall be registered under sub-section (1) of section 47;
- (zg) the publication under section 48 of awards and of certain orders; and
- (zh) the manner of assignment of an award under section 53.

¹These clauses were inserted by s. 6 of the Bengal Agricultural Debtors (Amendment) Act, 1942 (Ben. Act II of 1942).

of 1936.]

(Sections 56, 57.)

(3) The power of making rules conferred by clause (b) of sub-section (2) is subject to the condition that the rules be made after previous publication.

56. In making any rule under this Act the ¹[State Government] may direct that a breach thereof shall be punishable with fine which may extend to fifty rupees and, where the breach is a continuing one, with further fine which may extend to ten rupees for every day after the first during which the breach continues. Penalty for breach of rules.

57. The fees which may be prescribed under clause (b) of sub-section (2) of section 55 for an order of determination under sub-section (2) of section 18 and which have not been paid by the date fixed by the Board shall be recoverable as public demands payable to the Collector. Certain fees recoverable as public demands.

¹See footnote 2 on page 4, *ante*.

²This section 57 was inserted by section 25 of the Bengal Agricultural Debtors (Amendment) Act, 1940 (Ben. Act VIII of 1940).

Bengal Act X of 1936

(THE BENGAL WHIPPING ACT, 1936.)¹

ADAPTED The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

(23rd April, 1936.)

An Act to make certain offences against women punishable with whipping.

WHEREAS it is expedient to make certain offences against women punishable with whipping;

5 & 6 Geo. V, c. 61; 6 & 7 Geo. V, c. 37; 9 & 10 Geo. V, c. 101. AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Whipping Act, 1936. Short title and extent.

(2) It extends to the whole of ²[West Bengal].

2. Whoever—

- (a) being a member of an assembly of two or more persons the common object of which is to commit an offence punishable under section 366 of the Indian Penal Code, abets, commits or attempts to commit such offence, or
- (b) abets, commits or attempts to commit in respect of any female person any offence punishable under section 366A, 366B, 367, 372 or 373 of the said Code;
- Offences punishable with whipping in lieu of or in addition to other punishment.

Act XLV of 1860.

may be punished with whipping in lieu of or in addition to any other punishment to which he may for such abetment, offence or attempt be liable under the said Code.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, 1936, Pt. IV, p. 18; and for Proceedings in the Bengal Legislative Council, see the Proceedings of the Bengal Legislative Council, Vol. XLVIII, No. 1, pages 92 and 118.

²These words within square brackets were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

Bengal Act XIII of 1936

(THE BENGAL WATER HYACINTH ACT, 1936)

CONTENTS.

SECTION.

1. Short title, extent and commencement.
2. Definitions.
3. Prohibition of bringing water hyacinth into West Bengal.
4. Prohibition of sale, etc., of water hyacinth.
5. Prohibition of growing or cultivation of water hyacinth.
6. Prohibition of removing water hyacinth from one place to another.
7. Power to State Government to prohibit occupiers from allowing water hyacinth to exist within certain local area.
8. Cutting of branches of trees or shrubs to facilitate discovery or destruction of water hyacinth.
9. Power to Authorised Officer to enter on land, etc., in certain circumstances.
10. Restriction on entry by Authorised Officer.
11. Recovery of costs for works done by Authorised Officer.
12. Power to Collector to take possession of land or water for recovery of costs.
13. Construction of fences, barriers, etc.
- 13A. Cost of work under section 13.
14. Repair of *aile*.
15. Growing of hedges of *dhaincha* or other plants against the ingress of water hyacinth.
16. Power to Collector to use land for destruction of water hyacinth.
17. Keeping of water hyacinth for the purpose of destruction.
18. Sale, etc., of water hyacinth in certain circumstances.
19. Method of removal or destruction of water hyacinth.
20. Prosecutions.
21. Authorised Officers to be deemed public servants.
22. Indemnity.
23. Power of State Government to make rules.
24. Penalties.

Bengal Act XIII of 1936

(THE BENGAL WATER HYACINTH ACT, 1936)¹

AMENDED	...	Ben. Act IV of 1941.
ADAPTED	...	{ The Government of India (Adaptation of Indian Laws) Order, 1937. The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. The Adaptation of Laws Order, 1950.

(28th May, 1936.)

An Act to provide for the destruction of water hyacinth in Bengal.

WHEREAS it is expedient to make better provision for preventing the spread of water hyacinth in Bengal and for its destruction ;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Water Hyacinth Act, 1936.

(2) It extends to the whole of ²[West Bengal].

(3) It shall come into force on such date³ as the ⁴[State Government] may, by notification, appoint.

Short title, extent and commencement.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "Authorised Officer" includes the Collector and any person authorised by the Collector to exercise the functions of an Authorised Officer under sections 7, 8, ⁵[9 and 13A] ;

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 9th December, 1935, p. 96 ; and for report of the Select Committee, see the *Calcutta Gazette*, 1936, Pt. IV, p. 52 ; and for Proceedings of the Bengal Legislative Council, see the Proceedings of the Bengal Legislative Council, Vol. XLVII, No. 2, p. 286, and *ibid.*, Vol. XLVIII, No. 1, pages 76 and 353.

²These words within square brackets were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³The Act came into force on the 1st August, 1936, *vide* notification No. 4376Agri., dated the 9th July, 1936, published in the *Calcutta Gazette*, dated the 16th July, 1936, Pt. I, p. 1733.

⁴The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and, thereafter, the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁵The word, figures and letter within square brackets were substituted for the word and figure "and 9" by s. 2 of the Bengal Water Hyacinth (Amendment) Act, 1941 (Ben. Act IV of 1941).

(Sections 3—5.)

- (2) "Collector" includes any person appointed by the ¹[State Government] to exercise all or any of the functions of a Collector under this Act ;
- (3) "Court" means a principal Civil Court of original jurisdiction unless the ¹[State Government] has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act ;
- (4) "notification" means a notification published in the ²[Official Gazette] ;
- (5) "notified area" means an area specified in a notification issued under section 7 ;
- (6) "occupier" means the person in actual occupation of any land, premises or water or, if there is no one in actual occupation, the person having the right of occupation of the land, premises or water or his authorised agent ; and includes a local authority, a railway administration and a company in actual occupation or having such right of occupation ;
- (7) "prescribed" means prescribed by rules made under this Act ; and]
- (8) "water hyacinth" means the plant botanically known as *Eichhornia crassipes*—Solms and includes the seed and any part of the plant.

Prohibition of bringing water hyacinth into West Bengal.

3. No person shall, himself or by any other person on his behalf, bring water hyacinth into ³[West Bengal].

Prohibition of sale, etc., of water hyacinth.

4. No person shall, directly or indirectly himself or by any other person on his behalf, sell, expose for sale or keep for sale water hyacinth.

Prohibition of growing or cultivation of water hyacinth.

5. No person shall grow or cultivate water hyacinth in any garden or in any ornamental water or receptacle.

¹See footnote 4 on page 45, *ante*.

²These words within square brackets were substituted for the words "Calcutta Gazette" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³See footnote 2 on p. 45, *ante*.

of 1932.]

(Sections 6—8.)

6. No person shall, himself or by any other person on his behalf, remove any water hyacinth—

Prohibition of removing water hyacinth from one place to another.

(a) to any land, premises or water in his occupation except with a view to its being destroyed, or

(b) to any land, premises or water in the occupation of another person except for the purpose aforesaid and with the consent of such other person, or

(c) to any land, premises or water in the occupation of ¹[any Government] except for the purpose aforesaid and with the consent of the Collector.

Explanation.—The expression “remove water hyacinth” includes the causing of it to float by water from one place to another.

7. (1) The ²[State Government] may, by a notification, direct that within such local area and after such period as may be specified in the notification, no occupier shall allow water hyacinth to exist on any land, premises or water in his occupation.

Power to State Government to prohibit occupiers from allowing water hyacinth to exist within certain local area.

(2) The substance of such notification shall be published in the notified area in such manner as may be prescribed.

(3) After the issue of a notification under sub-section (1) every occupier in the notified area shall cause any water hyacinth that may, from time to time, be present on any land, premises or water in his occupation to be removed or destroyed.

(4) If any occupier in a notified area fails to comply with the provisions of this section in respect of any land, premises or water in his occupation, any Authorised Officer may, together with such persons as he may consider necessary for the purpose, enter on such land, premises or water and take such measures as are in his opinion necessary for removing or destroying the water hyacinth.

8. (1) With a view to facilitating the discovery or destruction of water hyacinth, an Authorised Officer may, subject to any rules made under this Act, by a notice served in the prescribed manner, direct an occupier of any land, premises or water within a notified area to cause—

Cutting of branches of trees or shrubs to facilitate discovery or destruction of water hyacinth.

(a) any branches of trees or shrubs on any such land or premises which overhang the edge of any river, stream, waterway, ditch, marsh, *bil*, lake, tank, pond, pool or pit to be cut back and any undergrowth or jungle thereon to be removed from such edge, within a distance specified in the notice, or

¹These words within square brackets were substituted for the word “Government” by Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 4 on p. 45, ante.

(Sections 9—12.)

(b) any vegetation appearing above the surface of any such water to be removed from the water,

within such period as may be specified in the notice.

(2) If such occupier fails to comply with a notice under sub-section (1), any Authorised Officer may, together with such persons as he may consider necessary for the purpose, enter on such land, premises or water and cause the branches of such trees or shrubs to be so cut back and such undergrowth or jungle or such vegetation to be removed.

Power to
Authorised
Officer to
enter on
land, etc.,
in certain
circums-

9. An Authorised Officer may at any time, together with such persons as he may consider necessary for the purpose, enter on any land, premises or water in a notified area and take such action as may be necessary in order to ascertain—

(a) whether any water hyacinth is present, and

(b) whether the measures prescribed for the removal or destruction of water hyacinth or any directions issued on the occupier under sub-section (1) of section 8 have been carried out.

Restriction
on entry
by
Authorised
Officer.

10. An Authorised Officer shall not enter under sub-section (4) of section 7 or sub-section (2) of section 8 or under section 9 into any dwelling house or any enclosed courtyard or garden attached to a dwelling house (except with the consent of the occupier thereof) without previously giving such occupier twenty-four hours' notice in writing of his intention to do so.

Recovery
of costs for
works done
by
Authorised
Officer.

11. Any costs incurred by the Authorised Officer for carrying out any measures under sub-section (4) of section 7 or sub-section (2) of section 8 shall be recoverable from the occupier as a public demand payable to the Collector.

Power to
Collector
to take
possession
of land or
water for
recovery
of costs.

12. If the Collector fails to recover, or considers it inadvisable to recover, any costs under section 11 he may, subject to any rules made under this Act, in his discretion, enter on and take possession of any land or water in respect of which the costs are due after giving notice to the occupier and retain possession thereof and turn the same to profitable account until the said costs together with interest thereon at such rate, not exceeding six and a quarter *per cent. per annum* as the ¹[State Government] may prescribe, have been realized from the profits or paid by the occupier.

¹See foot-note 4 on p. 45 ante.

of 1936.]

(Sections 13, 13A.)

13. (1) Subject to any rules made under this Act, the Collector may permit or cause fences, barriers or storage pounds to be constructed in or along the edge of any river, stream, waterway, lake, tank, marsh or *bil* whether public or private within a notified area, and booms or floating barriers to be placed or maintained therein, for the purpose of checking or diverting the movement of water hyacinth.

Construction of fences, barriers, etc.

(2) No person shall remove or damage any fences, barriers, storage pounds, booms and floating barriers constructed, placed or maintained under sub-section (1).

13A. (1) An Authorised Officer may cause a scheme and estimate to be prepared for the construction and maintenance of any work referred to in sub-section (1) of section 13.

Cost of work under section 13.

(2) As soon as possible after the preparation of the scheme and estimate the Authorised Officer shall prepare a preliminary list of apportionment, showing the names of persons likely to be benefited by the work and the portion of the cost thereof approximately payable by each such person, and shall, in the prescribed manner, publish a general notice inviting objections to the scheme, estimate, or list of apportionment by any person interested in, or likely to be benefited by, the scheme within such period as may be specified in the notice.

(3) The Collector shall, as soon as possible after the expiry of the period specified in the notice published under sub-section (2), proceed in the prescribed manner to consider any objections received in regard to the scheme, estimate or preliminary list of apportionment.

(4) Subject to such rules as may be prescribed in this behalf, the Collector may accept the scheme, estimate and list of apportionment with such modifications as he may deem necessary, and the decision of the Collector thereon shall be final.

(5) On the completion of the work referred to in sub-section (1) of section 13, the cost of the work shall be entered by the Authorised Officer in a final list of apportionment in accordance with the decision of the Collector under sub-section (4), and that portion of the cost which is so entered against the name of each person in the said list shall be the amount recoverable from that person.

(6) The amount referred to in sub-section (5) shall be recovered in the manner provided in sections 11 and 12.

Explanation.—For the purposes of this section ‘cost’ includes—

- (a) the total expenditure incurred for surveys, plans, estimates, valuations and incidental expenses connected with any scheme, whether antecedent or subsequent to the adoption of the scheme, and all expenses incurred in its execution ;

¹This new section was inserted by s. 3 of the Bengal Water Hyacinth (Amendment) Act, 1941 (Ben. Act IV of 1941).

(Sections 14—16.)

- (b) the estimated capitalized cost of the maintenance of the work ;
- (c) the total expenditure incurred by the Authorised Officer in connection with the scheme, inclusive of any preliminary inquiry and the apportionment of cost and its recovery ;
- (d) interest on all recoverable deposits or advances made by the ¹[State] Government, or by a local authority, or any person, at such rates and from and to such dates as may be fixed by the ¹[State] Government.

Repair
of ails.

14. Subject to any rules made under this Act, the Collector may by a general notice published in the prescribed manner direct that within the whole or a specified part of a notified area all occupiers of fields within one hundred feet of any river, stream, waterway, ditch, marsh, *bil*, lake, tank, pond, pool or pit shall by a date specified in the notice repair the small embankments commonly known as *ails* surrounding such fields.

Growing
of hedges
of
dhaincha
or other
plants
against
the ingress
of water
hyacinth.

15. If, in the opinion of the Collector, it is necessary for the protection of any area against the ingress of water hyacinth that hedges of *dhaincha* (*Sesbania aculeata*—Pers) or of any other plant that may be prescribed should be grown on any land in a notified area, he shall prepare a scheme giving particulars of the proposed alignment of such hedges and the boundaries of the area to be protected, and after publishing the scheme in such manner as may be prescribed and considering any objections submitted thereto may by a written notice served in such manner as may be prescribed direct any occupier of such land to grow thereon a hedge of such description by such date and for such period as may be specified in the notice.

Power to
Collector
to use
land for
destruction
of water
hyacinth.

16. (1) If, in the opinion of the Collector, it is necessary to use any waste or arable land in a notified area for the destruction thereon of water hyacinth removed from any water in the same or another notified area he may, subject to any rules made under this Act and after service of a notice in the prescribed manner on the occupier of such land specifying in the notice the purpose, and the term not exceeding six months, for which the land is needed, enter upon and take possession of the land and use it or permit it to be used for the said purpose.

(2) If any material damage or injury is caused thereby to the occupier of such land, the Collector shall pay to him such compensation as shall be agreed upon in writing between the Collector and such occupier :

Provided that in assessing such compensation the manurial value of the water hyacinth destroyed thereon shall be taken into account.

¹This word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1960.

of 1936.]

(Sections 17—22.)

(3) If the Collector and the occupier differ as to the sufficiency of the compensation or if the Collector and two or more claimants for compensation differ as to the apportionment thereof, the Collector shall refer the matter to the decision of the Court.

(4) On the expiry of the term referred to in sub-section (1) the Collector shall restore such land to the occupier after causing to be destroyed all water hyacinth that may have been removed thereto.

17. Notwithstanding anything contained elsewhere in this Act, any occupier in a notified area may keep on any land or in any water in his occupation water hyacinth for destruction.

Keeping of water hyacinth for the purpose of destruction.

18. Notwithstanding anything contained elsewhere in this Act, any person or class of persons authorised by the ¹[State Government] in this behalf may, subject to rules made under this Act, sell, remove or keep water hyacinth for a prescribed purpose.

Sale, etc., of water hyacinth in certain circumstances.

19. When water hyacinth is to be removed or destroyed under the provisions of this Act, such removal or destruction shall be in the prescribed manner.

Method of removal or destruction of water hyacinth.

20. No prosecution under this Act shall be commenced without the previous sanction of the Collector or after three months from the date of the alleged offence.

Prosecutions.

21. An Authorised Officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Authorised Officers to be deemed public servants.

Act XLV of 1960.

22. No suit, prosecution or other legal proceedings shall lie against the Collector or any Authorised Officer or persons accompanying an Authorised Officer for anything which is in good faith done or intended to be done under this Act or any rule made thereunder.

Indemnity.

¹See foot-note 4 on p. 45, ante.

(Sections 23, 24.)

Power of
State
Govern-
ment to
make
rules.

23. (1) The ¹[State Government] may make ²rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power the ¹[State Government] may make rules to provide for all or any of the following matters, namely :—

- (a) the manner of publication of the substance of a notification under sub-section (2) of section 7, of a general notice ³[under sub-section (2) of section 13A or] under section 14 and of a scheme under section 15 ;
- (b) the exercise of power by an Authorised Officer under sub-section (1) of section 8 ;
- (c) the manner of service of a notice under sub-section (1) of section 8, section 15 or sub-section (1) of section 16 ;
- (d) the exercise of powers by the Collector under sections 12, 13, ⁴[13A], 14 or 16 ;
- (e) the rate of interest payable under section 12 ;
- (f) the plants for growing hedges to prevent ingress of water hyacinth under section 15 ;
- (g) the purposes for which, and the conditions subject to which, water hyacinth may be sold, removed or kept under section 18 ; and
- (h) the manner of removal and destruction of water hyacinth under section 19.

(3) In making any rule under this section the ¹[State Government] may provide that a breach of it shall be punishable with fine which may extend to fifty rupees, and, where the breach is a continuing one, with a further fine which may extend to five rupees for every day after the first during which the breach continues.

Penalties.

24. Whoever contravenes any of the provisions of this Act mentioned in the first column of the following table shall, on conviction, be liable to a fine not exceeding one hundred rupees or in default to imprisonment not exceeding one month, and upon a second or subsequent conviction to a fine not exceeding two hundred rupees or in default to imprisonment not exceeding two months.

¹See foot-note 4 on p. 45, *ante*.

²For rules made under this section see the Bengal Statutory Rules and Orders, 1940 (Fourth Edition), Volume III, page 1209.

³These words, figures, letter and brackets within square brackets were inserted by s. 4(a) of the Bengal Water Hyacinth (Amendment) Act, 1941 (Ben. Act IV of 1941).

⁴These figures and letter within square brackets were inserted by s. 4(b) *ibid*.

of 1936.]

(Section 24.)

Explanation.—The entries in the second column of the following table headed “Subject” are not intended as definitions of the offences described in the provisions mentioned in the first column, or even as abstracts of those provisions, but are inserted merely as references to the subject thereof:—

1	2
Provisions of the Act.	Subject.
Section 3	Bringing of water hyacinth into ¹ [West Bengal].
Section 4	Sale, etc., of water hyacinth.
Section 5	Growing or cultivation of water hyacinth.
Section 6	Removal of water hyacinth to any land, premises or water.
Section 7, sub-section (3)	Failure to remove or destroy water hyacinth.
Section 8, sub-section (1)	Failure to cut branches of trees of shrubs, and to remove under- growth, jungle or vegetation.
Section 13, sub-section (2)	Removal of or damage to any fences, barriers, storage pounds, booms and floating barriers.
Section 14	Failure to repair <i>ails</i> .
Section 15	Failure to grow hedges of <i>dhaincha</i> or other plants for protection against the ingress of water hya- cinth.

¹See foot-note 2 on p. 45, *ante*.

Bengal Act XVI of 1936

[THE BENGAL LOCAL SELF-GOVERNMENT ASSOCIATIONS (RECOGNITION) ACT, 1936.]¹

AMENDED

.. Ben. Act VI of 1947.

ADAPTED

.. { The Government of India (Adaptation
of Indian Laws) Order, 1937.
The Indian Independence (Adaptation
of Bengal and Punjab Acts) Order, 1948.
The Adaptation of Laws Order, 1950.

(14th January, 1937.)

An Act to provide for the recognition by the Local Government of certain associations interested in the administration of Local self-government in Bengal and to enable contributions to be paid by local authorities to associations so recognised.

WHEREAS it is expedient to provide for the recognition by the Local Government of certain associations interested in the administration of local self-government in Bengal and to enable contributions to be paid by local authorities to associations so recognised ;

It is hereby enacted as follows :—

1. This Act may be called the Bengal Local Self-Government Associations (Recognition) Act, 1936. Short title.

2. The ²[State Government] may, if it thinks fit, by notification in the ³[Official Gazette], recognise any association, which, in the opinion of the ²[State Government], has been established in ⁴[West Bengal] with the sole object of encouraging the discussion of matters of importance relating to the administration of local self-government in ⁴[West Bengal], or otherwise generally promoting the interests of local self-government therein, and the ²[State Government] may also, if it thinks fit, at any time, in like manner, withdraw such recognition. Recognition of local self-government associations.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, 1936, Pt. IV, p. 89 ; and for Proceedings of the Bengal Legislative Council, see the Proceedings of the Bengal Legislative Council, Vol. XLIX, p. 107.

²The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³These words within square brackets were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words within square brackets were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

56 *The Bengal Local Self-Government Associations
(Recognition) Act, 1936.*

[Ben. Act XVI of 1936.]

(Sections 3—5.)

Contribution by local authorities to recognised associations.

3. Notwithstanding anything contained in any other Act, the Corporation of Calcutta, the Commissioners of any municipality at a meeting, a district board or a union board may, subject to the provisions of any rules made under section 5, pay a contribution, annually or otherwise, from the municipal, district, or union fund, as the case may be, to the funds of any association which is, for the time being, recognised by the ¹[State Government] under section 2.

Payment of travelling

4. Notwithstanding anything contained in any other Act, any member of a local authority which contributes to the funds of an association recognised under section 2 who attends, as a representative of such local authority, a general meeting ²[or a meeting of an executive committee] of the association held in ³[West Bengal] may, subject to the provisions of any rules made under section 5, be paid from the fund of such local authority the travelling expenses incurred by him in attending ⁴[such a meeting.]

⁵Provided that the number of meetings of an executive committee for attending which a member of a local authority may be paid travelling expenses under this section, shall not exceed four in one year.

Power to make rules.

5. (1) The ¹[State Government] may make ²rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power the ¹[State Government] may make rules to provide for all or any of the following matters, namely :—

(a) the maximum rates at which, and the conditions subject to which contributions may be paid under section 3 ;

(b) the rates at which, the conditions subject to which, and the maximum number of representatives to whom, travelling expenses may be paid under section 4.

¹See foot-note 2 on p. 55, *ante*.

²These words within square brackets were inserted by section 2 of the Bengal Local Self-Government Associations (Recognition) Amendment Act, 1947 (Ben. Act VI of 1947).

³See foot-note 4 on p. 55, *ante*.

⁴These words within square brackets were substituted for the words "the meeting" by section 2 of the Bengal Local Self-Government Associations (Recognition) Amendment Act, 1947 (Ben. Act VI of 1947).

⁵This proviso was added, *ibid*.

⁶For rules made under this section, see the Bengal Statutory Rules and Orders 1940 (Fourth Edition), Vol. III, page 1218.

Bengal Act XVIII of 1936

[THE PRESIDENCY-TOWNS INSOLVENCY (BENGAL AMENDMENT) ACT, 1936.]¹

REPEALED IN PART

.. Ben. Act I of 1939.

ADAPTED ..

{ The Government of India
(Adaptation of Indian Laws)
Order, 1937.
The Adaptation of Laws
Order, 1950.

(11th February, 1937.)

An Act to amend the Presidency-towns Insolvency Act, 1909, in its application to the Presidency-town of Calcutta.

III of
1909.

WHEREAS it is expedient to amend the Presidency-towns Insolvency Act, 1909, in its application to the Presidency-town of Calcutta in the manner hereinafter appearing ;

5 & 6
Geo. V, c.
61 ; 6 &
7 Geo.
V, c. 37 ;
9 & 10
Geo. V, c.
101.

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

•1. (1) This Act may be called the Presidency-towns Insolvency (Bengal Amendment) Act, 1936.

Short title
and
commence-
ment.

(2) It shall come into force on such date² as the ³[State Government] may, by notification in the ⁴[Official Gazette], appoint.

2. The Presidency-towns Insolvency Act, 1909, hereinafter referred to as the said Act, shall, in its application to the Presidency-town of Calcutta, be amended in the manner hereinafter provided.

Applica-
tion of
Act.

3. In section 77 of the said Act,—

(a) *Rep. by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).*

(b) in sub-section (1A) for the figures “112” the figures and letter “112A” shall be substituted ; and

Amend-
ment of
section 77
of Act III
of 1909.

¹For Statement of Objects and Reasons and notes on clauses, see the *Calcutta Gazette*, dated the 22nd October, 1936, Pt. IV, p. 121 ; and for Report of the Select Committee, see the *Calcutta Gazette*, dated the 26th November, 1936, Pt. IV, p. 132 ; and for Proceedings of the Council, see the Proceedings of the Bengal Legislative Council, Vol. XLIX, pages 28 and 246.

²The Act came into force on the 15th March, 1937, vide Notification No. 1164-J., dated the 17th February, 1937, published in the *Calcutta Gazette*, dated the 25th February, 1937, Pt. I, p. 369.

³The words “Provincial Government” were originally substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “State” was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴These words within square brackets were substituted for the words “Calcutta Gazette” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act XVIII

(Section 4.)

(c) for sub-section (3) the following sub-section shall be substituted, namely :—

“(3) Notwithstanding anything contained in sub-section (1), the person substantively or temporarily holding the office of official assignee under this Act for the High Court ¹[at Calcutta] immediately before the commencement of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936, shall, without further appointment for that purpose, become the official assignee, substantive or temporary, as the case may be, as if appointed by the ²[State Government] under sub-section (1).”

Ben. Act
XVIII of
1936.

Substitution
of new
sections
81 and 81B
for
section
81.

4. For section 81 of the said Act, the following sections shall be substituted, namely :—

“81. The official assignee and any deputy official assignee shall, in the discharge of their functions under this Act, be under the administrative control over of the ²[State Government] except in so far as they are required by or under this Act to act under the control or direction of the High Court.

81A. *Rep. by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).*

81B. (1) The ²[State Government] may determine the number, Establishment of designations and grades of officers and servants official assignee. (other than employees who are paid by the day) whom the official assignee may employ for the purposes of this Act and the amount and nature of the salary, allowances and other remuneration to be paid to each such officer and servant.

(2) *Rep. by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).*

(3) The salaries, allowances and other remuneration of the officers and servants of the official assignee and all other costs, charges and expenses of his establishment shall be paid by the ²[State Government].”

¹The words within square brackets were substituted for the words “at Fort William” by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

²See foot-note 2 on p. 57, ante.

The Presidency-towns Insolvency (Bengal Amendment) 56
Act, 1936.

of 1936.]

(Sections 5, 6.)

5. Section 82 of the said Act shall be renumbered as sub-section (1) of that section and after that sub-section as so renumbered the following sub-sections shall be added, namely :—

Amend-
ment of
section 82.

“(2) The revenues of the ¹[State Government] shall be liable to make good all sums which the official assignee is required by order of the Court to pay under sub-section (1) in respect of any misfeasance, neglect or omission which occurred after the commencement of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936.

Ben. Act
XVIII of
1936.

(3) Nothing in sub-section (2) shall prevent the ¹[State Government] from recovering any sum paid by the ¹[State Government] under that sub-section from the person who was holding the office of official assignee when the misfeasance, neglect or omission occurred.”

6. After section 82 of the said Act the following sections shall be inserted, namely :—

Insertion
of new
sections
82A, 82B
and 82C.

• “82A. Where the official assignee has incurred, whether before or after the commencement of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936, in the matter of any insolvency—

Liability of State Government for costs in legal proceedings, etc.

(a) any costs in legal proceedings taken by him under the direction of the Court, or

(b) any civil liability, *bona fide* in the discharge of his duties, the revenues of the ¹[State Government] shall be liable for the payment of such costs or liability, in so far as the assets realized by the official assignee in respect of such insolvency are insufficient to meet such costs or liability.

82B. Where an insolvent's estate has no available assets, the official assignee shall not incur any costs, charges or expenses in respect of such estate, without the express direction of the Court, but the Court on the application of the official assignee may empower him to spend an amount specified by the Court in payment of any costs, charges and expenses of or in connection with the realization or administration of the estate of the insolvent, and the revenues of the ¹[State Government] shall be liable for the payment of such amount.

Certain liabilities not to be incurred without the express direction of the Court.

¹See foot-note 3 on p. 57. ante.

(Section 7.)

82C. Any sum paid out of the revenues of the ¹[State Government] under section 82A or section 82B in respect of an insolvent's estate shall be repaid to the ¹[State Government] by the official assignee out of any assets of the estate which may subsequently become available, in priority to all other claims and charges on such assets other than fees and percentages chargeable by the official assignee under this Act."

Insertion
of new
section
84A.

7. After section 84 of the said Act the following section shall be inserted, namely:—

"84A. (1) The official assignee shall maintain an account of in the prescribed manner and shall pay into such account, after making any prescribed deductions—
Account of official assignee, investments and proceeds of investments.

(a) all monies received by him in the realization of insolvents' estates, and

(b) any other sums that may be prescribed.

(2) Subject to the control of the ¹[State Government], whenever the cash balance standing to the credit of the said account is, in the opinion of the official assignee in excess of the amount which is required for the time being to meet demands in respect of insolvents' estates, or to make the payments required under section 122 or any other payments that may be prescribed, the official assignee shall invest such excess in the prescribed manner.

(3) Subject to the control of the ¹[State Government], whenever any part of the money so invested is, in the opinion of the official assignee, required to meet any demands in respect of insolvents' estates, or to make the payments required under section 122 or any other payments that may be prescribed, the official assignee may realize such part of the said investments as may be necessary, and shall credit the proceeds of such realization to the said account.

(4) The official assignee shall transfer and pay to such authority and in such manner and at such times as may be prescribed in this behalf the proceeds of such investments, and the same shall be carried to the account and credit of the ¹[State Government].

(5) The provisions of sub-section (4) shall apply to the balance of the proceeds, accumulated before the commencement of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936, of the investments made by the official assignee of sums received by him in the realization of insolvents' estates, whether such balance or any part thereof has been invested or not.

Ben. Act
XVIII of
1936.

of 1936.]

(Sections 8, 9):

Ben. Act
XVIII of
1936.

(6) Subject to the provisions of sub-section (5), the provisions of sub-sections (1), (2) and (3) shall apply to all monies in the hands of the official assignee at the date of the commencement of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936, and to all investments made by him before that date."

8. In section 112 of the said Act—

Amend-
ment of
section
112.

(a) in sub-section (1), after the word "rules" the words, figures and letter "except in regard to those matters to which section 112A applies" shall be inserted ;

(b) in sub-section (2)—

(i) in clause (a), after the word "percentages" the words "other than fees and percentages chargeable by the official assignee" shall be inserted ;

(ii) clauses (b), (d), (e), (f), (g), (h), (i) and (s) shall be omitted.

9. After section 112 of the said Act the following section shall be inserted, namely :—

Insertion
of new
section
112A.

"112A. (1) The ¹[State Government] may make rules for carrying into effect the objects of this Act in regard to those functions of the official assignee which are discharged under the administrative control of the ¹[State Government].

Power of State Government to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for and regulate—

(a) the fees and percentages to be charged by the official assignee for and in respect of proceedings under this Act and the manner in which the same are to be collected and accounted for ;

(b) the receipts, payments and accounts of the official assignee;

(c) the audit of the accounts of the official assignee ;

(d) the security to be given by the official assignee and his deputy or deputies ;

(e) the distribution of work between the official assignee and his deputy or deputies ;

(f) *Rep. by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).*

(g) the payment by the ¹[State Government] of sums under sub-section (2) of section 82, or under section 82A or section 82B ;

62 *The Presidency-towns Insolvency (Bengal Amendment)
Act, 1936.*

[Ben. Act XVIII of 1936.]

(Sections 10—12).

- (h) the repayment by the official assignee of sums under section 82C;
 - (i) the maintenance of an account by the official assignee under sub-section (1) of section 84A and the payments to be made into such account;
 - (j) the investment of sums by the official assignee under sub-section (2) of section 84A and the realization of such investments;
 - (k) the transfer and payment by the official assignee of the proceeds of investments to the authority referred to in sub-section (4) of section 84A; and
 - (l) the transfer and payment by the official assignee of fees and percentages, and of commission or other remuneration, to the authority referred to in section 125.
- (3) Rules made under this section shall be published in the ¹[Official Gazette] and shall thereupon have the same force and effect as if they had been enacted in this Act."

ment of
section
113.

10. In section 113 of the said Act, for the words "of this Part" the words and figures "of section 112" shall be substituted.

Amend-
ment of
section
125.

11. Section 125 of the said Act shall be renumbered as sub-section (1) of that section and after that sub-section as so renumbered the following sub-sections shall be added, namely:—

"(2) The official assignee shall transfer and pay to such authority and in such manner and at such times as may be prescribed in this behalf all fees and percentages received by him after the commencement of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936, and the same shall be carried to the account and credit of the ²[State Government].

Ben. Act
XVIII of
1936.

(3) Any percentages or commission or other remuneration received by the official assignee if appointed as a trustee in a composition or as agent or another official assignee shall be similarly so transferred and paid by him."

Amend-
ment of
rule 18 in
the Second
Schedule.

12. In rule 18 in the Second Schedule to the said Act, for the words and brackets "(unless it is otherwise ordered)" the words and brackets "(unless it is otherwise ordered for reasons to be recorded in writing)" shall be substituted.

¹These words within square brackets were substituted for the words "Local Official Gazette" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 3 on p. 57, *infra*.

Bengal Act II of 1937

[THE BENGAL LEGISLATIVE ASSEMBLY (MEMBERS' EMOLUMENTS) ACT, 1937.]¹

AMENDED ... Ben. Act I of 1945.

ADAPTED ... { The Indian Independence
(Adaptation of Bengal and
Punjab Acts) Order, 1948.
The Adaptation of Laws
Order, 1950.

(5th October, 1937.)

An Act to fix the salaries and allowances of Members of the Bengal Legislative [Assembly].

WHEREAS it is expedient to fix the salaries and allowances of the Members of the Bengal Legislative [Assembly]:

VOLUME V.

Page 63—

In section 2, after the words "means a Member" insert the words "either of the West Bengal Legislative Council but not including the Chairman thereof, or".

legislative Short
title and
commencement.
the first

(Inserted by West Ben. Act XVI of 1959, section 2.)

[No. 5, dated the 1st May, 1961.]

means Definition.
Bengal]

Page 63— Legislative Assembly, other than the Governor's Council of

*After the proviso to section 3, insert the following further: bly, tries

'Provided further that there shall be paid to the member, of Salaries.
who is the Leader of the Opposition, salaries and on
allowances as specified below:—

Salary—Rs. 750 per month.

period
te of

House allowance—Rs. 250 per month.

Conveyance allowance—Rs. 200 per month.

Explanation I.—"Leader of the Opposition" means that Extra-
member of the West Bengal Legislative Assembly who of the
is for the time being the Leader in the State Assembly id for
of the party in opposition to the State Government of the
having the greatest numerical strength in the said word
Assembly; o, the
1948.

Explanation II.—If any doubt arises as to which is or was sitted,
at the material time the party in opposition to the word
State Government having the greatest numerical word
strength in the West Bengal Legislative Assembly, or Adap-
as to who is or was at any material time the Leader pare-
in the said Assembly of such a party, the question ndence
shall be decided for the purposes of this Act, by the
Speaker of the said Assembly, and his decision, certi-
fied in writing under his hand, shall be final and of the
conclusive. st, 1945
to have
1944, 1955

(Inserted by West Ben. Act XXIV of 1957, section 2.)

[No. 2, dated the 1st August, 1958.]

64 The Bengal Legislative Assembly (Members' Emoluments) Act, 1937.

Page 64—

In section 4,—

Ben. Act I of 1937.]

(1) In clause (a)—

- (i) in sub-clause (ii) after the words "journeys by" insert the words "air at the rate of one and one-fourth times the air fare and for journeys by"; and etermined by rules
- (ii) in sub-clause (iii) omit the word "and" appearing at the end. rdinarily resident prescribed by rules

Page 64—

For section 5, substitute the following section, namely :—

Power to make rules.

5. (1) The State Government shall make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the State Government may make rules —

Ben. Act I of 1945.

- (a) to prescribe the periods during which, and the conditions under which, daily allowance and conveyance allowance may be drawn, the circumstances under which such allowances may be withheld, and the conditions under which the journeys referred to in clause (c) of section 4 may be undertaken ;
- (b) to fix the rates of road mileage allowance, and to prescribe the conditions under which such allowance may be drawn ; and
- (c) to prescribe the distances referred to in section 4 in respect of each of the allowances referred to in the said section.

(3) Until rules are made under this section rules framed under the Bengal Legislative Assembly (Members' Emoluments) Act, 1937, before the commencement of the Bengal Legislative Assembly (Members' Emoluments) (Amendment) Act, 1959, shall continue to remain in force."

Ben. Act II of 1937

(Substituted by West Ben. Act XVI of 1959, section 4.)

[No. 5, dated the 1st May, 1961.]

"(c) there shall be no allowance for journeys in connection with the duties of members, to any place or places within India, railway coupons or vouchers up to a maximum limit of three thousand miles a year."

tion 4 in respect of the said section.

(Inserted, omitted, substituted and added by West Ben. Act XVI of 1959, section 3.)

published in the

[No. 5, dated the 1st May, 1961.]

... powers conferred under sections 4 and 5 of the Bengal Legislative Assembly (Members' Emoluments) Act, 1937, published in the Calcutta Gazette, Extraordinary, dated the 5th October, 1937, Pt. I, p. 242.

"This sub-clause (c) was substituted for the original sub-clause by s. 3 of the Bengal Legislative Assembly (Members' Emoluments) Amendment Act, 1945 (Ben. Act I of 1945).

"The word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1960.

Bengal Act III of 1938

(THE BENGAL FAMINE INSURANCE FUND ACT, 1938.)¹

AMENDED West Ben. Act VII of 1948.
 The Indian Independence
 (Adaptation of Bengal and
 ADAPTED Punjab Acts) Order, 1948.
 The Adaptation of Laws
 Order, 1950.

(5th May, 1938.)

An Act to provide for the establishment and maintenance in Bengal of a Fund called the Bengal Famine Insurance Fund for expenditure upon relief of, and insurance against, famine and distress caused by serious drought, flood, earthquake or other natural calamities.

WHEREAS it is expedient to provide for the establishment and maintenance in Bengal of a Fund for expenditure upon relief of, and insurance against, famine and distress caused by serious drought, flood, earthquake, or other natural calamities ;

It is hereby enacted as follows :—

1. This Act may be called the Bengal Famine Insurance Fund Act, ²[1938]. Short title.

2. In this Act, unless there is anything repugnant in the subject or context, "Fund" means the ³[West Bengal] Famine Insurance Fund established under section 3. Definition.

3. On the commencement of this Act, the ⁴[State] Government shall establish in and for ⁵[West Bengal] a Fund, called the ⁵[West Bengal] Famine Insurance Fund. Establishment of the West Bengal Famine Insurance Fund.

The Fund shall consist of—

- (i) the contribution by the ⁴[State] Government under section 4 ;
- (ii) such other sums as the ⁴[State] Government may contribute to the Fund under section 7 ; and
- (iii) the interest which may from time to time accrue on the securities in which the sums to the credit of the Fund may be invested or re-invested under section 6.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 6th August 1937, Pt IV, p. 208. For proceedings of the Bengal Legislative Assembly see the Official Report of the Bengal Legislative Assembly Proceedings, Vol. LI, No. 2, pages 202-314, Vol. LII, No. 2, pages 46-56 ; and for proceedings of the Bengal Legislative Council see the Official Report of the Bengal Legislative Council Proceedings, Vol. 1, pages 32-38 and 60-85.

²The figures within square brackets were substituted for the figures "1937" by sec. 2 and the First Schedule to the West Bengal Repealing and Amending Act, 1948 (West Ben. Act VII of 1948).

³The words within square brackets were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁴The word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Sections 4—7.)

Initial contribution to the Famine Insurance Fund by State Government.

4. As soon as may be after the commencement of this Act, the ¹[State] Government shall, for the purpose of the establishment of the Fund, make an initial contribution to the Fund, of the sum of ten lakhs of rupees.

Purposes for which the Fund may be utilised.

5. Expenditure from the Fund shall not be incurred except upon the relief of famine and the relief of distress caused by serious drought, flood, earthquake or other natural calamities :

Provided that, if at any time, the total amount of the Fund exceeds twelve lakhs of rupees, the ¹[State] Government may utilise such excess to meet expenditure on protective irrigation works and other works for the prevention of famine or flood or to pay debt charges for which the ¹[State] Government may from time to time be liable, including interest, sinking fund charges and redemption charges.

Investment and re-investment of amount not required.

6. The ¹[State] Government shall from time to time invest or re-invest in its own securities or in the securities of the Central Government all sums to the credit of the Fund, which may not be immediately required for any of the purposes mentioned in section 5.

Accounts of the Fund and making up of the deficiency in the Fund.

7. (1) The Accounts of the Fund shall be made up at the end of each financial year, the securities, if any, belonging to the Fund, being valued at their market value on the last day of such year and an abstract of such Accounts shall be placed before ² * * * the ³[West Bengal] Legislative Assembly ⁴[and before the West Bengal Legislative Council when that Council is constituted] every year along with the annual financial statement of the ¹[State].

(2) If the accounts so made up in respect of any year show that the balance at the credit of the Fund falls short of twelve lakhs of rupees, the deficiency shall be made up by contribution from the revenues of the ¹[State] :

Provided that if the deficiency exceeds two lakhs of rupees, it may be made up in annual instalments, the amount of each instalment except the last being not less than two lakhs of rupees

¹See foot-note 4 on p. 65, ante.

²The words "the Bengal Legislative Council and" were omitted by paragraph (1) of Article 3 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³See foot-note 3 on p. 65, ante.

⁴The words within square brackets were inserted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

of 1935.]

(Sections 8, 9.)

8. All contributions made under this Act to the Fund are hereby declared to be expenditure charged upon the revenues of the ¹[State].

**Contribu-
tions under
the Act to
be charged
upon the
revenues of
the State.**

9. The ¹[State] Government may make rules, consistent with this Act, for the purpose of giving effect to the provisions of this Act.

**Power of
State
Govern-
ment to
make rules.**

¹See foot-note 4 on p. 65, *ante*.

Bengal Act IV of 1938

(THE BENGAL EXPIRING LAWS ACT, 1938.)¹

(19th May, 1938.)

An Act to provide for the continuance in force of certain Bengal Acts.

WHEREAS the Bengal Acts mentioned in the schedule are, in so far as they are temporary in their duration, limited to expire on certain dates during the year 1938 ;

AND WHEREAS it is expedient that those Acts should be continued in force and for that purpose amended in the manner specified in the schedule ;

It is hereby enacted as follows :—

1. This Act may be called the Bengal Expiring Laws Act, Short title. 1938.

2. The Bengal Acts mentioned in the schedule (hereinafter referred to as the said Acts) shall be continued in force, and such provisions contained in the said Acts as limit the periods for which the said Acts or any parts thereof are to remain in force, namely those provisions specified in the fourth column of the schedule, are hereby repealed :

Certain Acts to be continued.

Ben. Act
XII of
1935 .

Provided that clause (7) of section 7 of the Indian Stamp (Bengal Amendment) Act, 1935, shall not continue in force after the 31st May, 1938.

3. If any or all of the said Acts or parts thereof were due to expire before the commencement of this Act, this Act shall, notwithstanding the provisions of any other law, be deemed and taken to have effect as fully and effectually, as if this Act had come into force before the first date on which any of the said Acts or parts thereof were due to expire.

Contingent provision.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 4th February, 1938, Pt. IV, p. 77. For proceedings of the Bengal Legislative Assembly see the proceedings of the meeting of the Bengal Legislative Assembly held on the 3rd March, 1938, and for the proceedings of the Bengal Legislative Council see the proceedings of the meetings of the Bengal Legislative Council held on the 21st, 22nd, 23rd and 24th March, 1938.

[Ben. Act IV of 1938.]

*(The Schedule.)***THE SCHEDULE***(See Section 2.)*

Year.	No.	Short title.	Provisions repealed.
1	2	3	4
1935	X	The Bengal Electricity Duty Act, 1935.	In sub-section (3) of section 1, the words "and shall continue in force for three years only".
1935	XI	The Court-fees (Bengal Second Amendment) Act, 1935.	Sub-section (4) of section 1.
1935	XII	The Indian Stamp (Bengal Amendment) Act, 1935.	Sub-section (4) of section 1.
1935	XIII	The Bengal Amusements Tax (Amendment) Act, 1935.	Sub-section (3) of section 1.

Bengal Act VII of 1938

(THE CALCUTTA OFFICIAL RECEIVER'S ACT, 1938.)¹

ADAPTED

.. The Adaptation of Laws Order,
1950.

(22nd September, 1938.)

An Act to provide for the administration and control of the office of Official Receiver of the High Court in Calcutta.

WHEREAS it is expedient to provide for the administration and control of the office of Official Receiver of the High Court in Calcutta ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Calcutta Official Receiver's Act, 1938. Short title and commencement.

(2) It shall come into ²force on such date as the ³[State] Government may, by notification in the *Official Gazette*, appoint.

2. In this Act unless there is anything repugnant in the subject or context— Definitions.

(1) "Court" means the High Court in Calcutta ;

(2) "Official Receiver" means the Official Receiver of the Court ;

(3) "prescribed" means prescribed by rules made by the ³[State] Government under this Act.

3. (1) There shall be an Official Receiver and there may be one or more Deputy Official Receivers. Appointment, status, rights, liabilities, etc., of Official Receiver and Deputy Official Receiver.

(2) The offices of Official Receiver and of Deputy Official Receivers (if any) shall be civil posts under the ⁴[Government] in India.

(3) Subject to the provisions of sub-section (2) of section 6, all rights, privileges, titles and liabilities of the Official Receiver subsisting immediately prior to the commencement of this Act shall accrue to and vest in the Official Receiver appointed under this Act.

¹For Statement of Objects and Reasons *see*, the *Calcutta Gazette*, dated the 27th January, 1938, Pt. IVA, p. 11. For proceedings of the Bengal Legislative Assembly *see* the Official Report of the Bengal Legislative Assembly Proceedings, Vol. LII, No. 1, pages 52-56 and 94-108, and for proceedings of the Bengal Legislative Council *see* the Official Report of the Bengal Legislative Council Proceedings, Vol. II, pages 227-231.

²The Act came into force on the 6th July, 1939, *vide* Notification No. 2365J., dated the 1st July, 1939, published in the *Calcutta Gazette*, of the 6th July, 1939, Part I, page 1542.

³The word "State" was substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

⁴The word "Government" was substituted for the word "Crown", *ibid*.

(Sections 4—6.)

(4) The person holding the office of Official Receiver immediately prior to the commencement of this Act shall without further appointment become the Official Receiver appointed under this Act, and it shall not be necessary for the Court to reappoint him under section 4 in any case in which he has previously been appointed a receiver.

(5) A Deputy Official Receiver shall, subject to the control of the ¹[State] Government and to general or special orders of the Official Receiver, be competent to discharge any of the duties and exercise any of the powers of the Official Receiver and shall, when discharging such duties or exercising such powers, have the same rights and privileges and be subject to the same liabilities as the Official Receiver.

Appoint-
ment of
Official
Receiver
as receiver
and his
duties,
rights and
liabilities
as such.

4. Subject to, and in accordance with, the provisions of this Act and of rules made thereunder but notwithstanding the provision of sub-section (2) of section 3, the Official Receiver may be appointed a receiver by the Court in respect of any property, and save as provided in this Act, he shall have the same powers, duties and liabilities, shall be entitled to the same rights and privileges and shall be subject to the same control by the Court as any other receiver so appointed.

Conditions
of re-
ceivership.

5. (1) The Official Receiver shall not act as receiver in respect of any property except in accordance with the provisions of this Act and of rules made thereunder.

(2) Notwithstanding anything contained in any other law, the Official Receiver—

(a) shall not be required by the Court to enter into any bond or security, and

Pages 72-73—

In section 6,—

(a) in sub-sections (1) and (2), for the words "revenues of the State", wherever they occur, substitute the words "Consolidated Fund of the State of West Bengal";

(b) in sub-section (4).

(Substituted and omitted by West Ben. Act XVIII of 1959, section 2.)

No. 5 dated the 1st May, 1961.]

le to make
the Official
personally

[te] nor the
any liability to which
contributed, or which neither he nor any of his officers could,
by exercise of reasonable diligence have averted.

¹See foot-note 3 on p. 71, ante.

of 1938.]

(Sections 7—9.)

(2) Nothing in sub-section (1) shall be deemed to render liable the revenues of the ¹[State] or any Official Receiver appointed under this Act for anything done by, or under the authority of, any Official Receiver of the Court before the commencement of this Act.

(3) Nothing in sub-section (1) shall prevent the ¹[State] Government from recovering any sum paid by them thereunder from the Official Receiver liable personally to pay such sum.

(4) Sums payable by the ¹[State] Government under sub-section (1) are hereby declared to be charged on the revenues of the ¹[State].*

Page 73—

In section 7,—

(a) in sub-section (2), omit the words "properties or";

(b) after sub-section (2), add the following sub-section, namely:—

way of Fees.
Court
cepted
harge

Page 73—

For sub-section (1) of section 8, substitute the following sub-section, namely:—

(b) the Official Receiver shall transfer and pay into the account referred to in sub-section (1) in such manner and at such times as may be prescribed the proceeds of the realisation of investments under clause (c) of sub-section (2), any profits accruing from such realisation and the interest earned by any investments under clause (b) of sub-section (2).

(c) the Official Receiver may, if in his opinion any part of the money so invested is required to meet the demands or to make the payments referred to in clause (a), realise such part of the sums invested as may be necessary for such purposes.

ferent
he
it,
all ry such Transfer
m-ly pres- and pay-
or this ment of
d lit of fees.
) eiver
alled)
other

(3) The Official Receiver shall transfer and pay into the account referred to in sub-section (1) in such manner and at such times as may be prescribed the proceeds of the realisation of investments under clause (c) of sub-section (2), any profits accruing from such realisation and the interest earned by any investments under clause (b) of sub-section (2).

(4) The Official Receiver shall maintain a personal deposit account in the prescribed manner and shall pay into such account all sums withdrawn under clause (a) of sub-section (2) and any other sum as may be prescribed.

(5) Nothing in this section shall be deemed to affect the power of the Court to give directions to the Official Receiver in regard to the amount and manner of investment, or of the realisation of investment, of any property held by him as a receiver appointed by the Court."

namely:—

d pay into the
ngal all monies
of any property
ated a receiver

ount of
ial
river,
st-
ts and
eds
vest-
a.

rnment and in
be prescribed—

withdraw from
sub-section (1)—

ing to meet the
dstration of the
make any pay-

for investment

(Substituted by West Ben. Act XVIII of 1959, section 5.)

[No. 5, dated the 1st May, 1961.]

(Sections 10, 11.)

b) whenever any part of the money so invested is in the opinion of the Official Receiver, required to meet such demands or to make such payments, he may realise such part of the sums invested as may be necessary for such purposes, and he shall credit the proceeds of such realisation to the said account.

(3) The Official Receiver shall transfer and pay to such authority and in such manner and at such times as may be prescribed, the interest earned by, and any profits accruing from the realisation of, any investments under clause (a) of sub-section (2), and the same shall be carried to the account and credit of ¹[State] revenues.

(4) Nothing in this section shall be deemed to affect the power of the Court to give directions to the Official Receiver in regard to the investment of any property held by him as a receiver appointed by the Court or in regard to the credit of any interest earned by, and any profits accruing from the realisation of, such investment.

Suits by or
against the
Official
Receiver.

10. (1) Nothing in section 80 of the Code of Civil Procedure, Act V of 1908, shall apply to any suit against the Official Receiver in which no relief is claimed against him personally.

(2) The Official Receiver shall not sue or be sued without the express permission of the Court.

(3) Subject to the —

of all other law
Official Receiver
Official Receiver
old property of
ements binding
all other acts
n of his office.

les for carrying
se functions of
administrative

generality of

cial Receiver

the ¹[State]

under section
e to collected

in section, see

Pages 74-75—

In section 11,—

(a) for sub-section (1), substitute the following sub-section, namely:—

“(1) The State Government may make rules for carrying into effect the objects of this Act in regard to the functions of the Official Receiver.”;

(b) in sub-section (2), —

(i) for clause (d), substitute the following clause, namely:—

“(d) the manner in which and the times at which fees or remuneration referred to in section 8 shall be transferred and paid.”;

(ii) in clause (g), insert the words “the insurance of such properties and assets or” before the words “the safe custody”;

(iii) omit clause (h);

(iv) for clause (i), substitute the following clause, namely:—

“(i) the manner and times of making payments into, and the procedure to be followed in making withdrawals from, the account referred to in sub-section (1) of section 9.”;

(u) for clause (j), substitute the following clause, namely :—

"(j) the investment of monies, the securities for investment and the realisation of investments under section 9 ; "

(vi) for clause (k), substitute the following clause, namely :—

"(k) the payments referred to in clause (a) of sub-section (2) of section 9 ; "

(vi) after clause (k), add the following clause, namely :—

"(l) the personal deposit account and the sums payable therein under sub-section (4) of section 9."

d the
profits
to ;
oiver ;

(Substituted, inserted, omitted and added by West Ben. Act XVIII of 1959, section 6.)

[No. 5, dated the 1st May, 1961.]

by come
Official

(h) the deductions referred to in sub-section (1) of section 9 and the sums which shall be paid into the account of the Official Receiver under clause (b) thereof ;

(i) the procedure to be followed in making payments into, and withdrawals from the account referred to in section 9 ;

(j) the investment of monies and the realisation of investments under section 9 ;

(k) the payments referred to in sub-section (2) of section 9.

Bengal Act IV of 1939¹

THE BENGAL MATERNITY BENEFIT ACT, 1939.

ADAPTED

{ The Indian Independence (Adap-
tation of Bengal and Punjab
Acts) Order, 1948.
The Adaptation of Laws Order,
1950.

[20th April, 1939.]

An Act to regulate the employment of women in factories for certain periods before and after childbirth and to provide for the payment of maternity benefit to them.

WHEREAS it is expedient to regulate the employment of women in factories for certain periods before and after childbirth and to provide for the payment of maternity benefit to them ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Maternity Benefit Act, 1939.

Short title
extent and
commence-
ment.

(2) It extends to the whole of ²[West Bengal].

(3) It shall come into force on such date³ as the ⁴[State] Govern-ment may, by notification in the *Official Gazette*, direct.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

- (a) "Child" includes a still-born child ;
- (b) "employer" includes the occupier of a factory and the manager of a factory ;
- (c) "factory" means a factory as defined in clause (j) of section 2 of the ⁵Factories Act, 1934, and includes a place declared to be a factory under sub-section (1) of section 5 of that Act, but does not include a seasonal factory ;

XXV of
1934.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 19th August, 1937, Part IVA, page 6 ;

the Report of the Select Committee was presented to the Bengal Legislative Assembly on the 29th July, 1938 ;

for proceedings of the Bengal Legislative Assembly, see the Bengal Legislative Assembly proceedings of the 30th September, 1937, 16th February, 29th July and 19th and 22nd August, 1938.

²The words within square brackets were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³The Act was brought into force on the 1st January, 1940, vide notification No. 3248Com., dated the 30th October, 1939, published at page 2784 of the *Calcutta Gazette* of the 2nd November, 1939.

The Act came into force in Darjeeling on the 1st January, 1940, vide notification No. 3249Com., dated the 30th October, 1939, at page 2784 of the *Calcutta Gazette*, dated the 2nd November, 1939.

⁴The word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁵The Factories Act, 1934 (XXV of 1934), was repealed and re-enacted by the Factories Act, 1948 (LXIII of 1948).

(Sections 3—5.)

- (d) "maternity benefit" means the sum of money payable under the provisions of this Act to a woman employed in a factory ;
- (e) "medical practitioner" means a medical practitioner nominated for the purposes of this Act by the employer with the approval of the Inspector of Factories ;
- (f) "wages" means wages as defined in clause (vi) of section 2 of the Payment of Wages Act, 1936 ;
- (g) "woman" means a woman worker ; and
- (h) expressions used, but not defined in this Act, have the same meanings as in the ¹Factories Act, 1934.

IV of 1936.

XXV of 1934.

Employment of or work by women in factories prohibited during certain period.

3. After this Act comes into force—

- (1) no employer shall knowingly employ a woman in any factory during the four weeks immediately following the day of her delivery ; and
- (2) no woman shall work in any factory during the four weeks immediately following the day of her delivery.

Right to and liability for payment of maternity benefit.

4. (1) Subject to the provisions of this Act, every woman employed in a factory shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of her average daily earnings calculated to the nearest quarter of an anna in the manner provided in sub-section (2) or at the rate of eight annas a day, whichever is greater for the actual days of her absence, which shall include holidays and non-working days, during the period of four weeks immediately preceding and including the day of her delivery and for the four weeks immediately following that day :

Provided that a woman shall not be entitled to maternity benefit unless she has been employed in the factory of the employer from whom she claims maternity benefit for a period of not less than nine months immediately preceding the day of her delivery.

(2) The average daily earnings referred to in sub-section (1) shall be calculated by dividing the total wages earned by the woman during the three months immediately preceding the date on which she gives notice under sub-section (1) of section 5 by the actual number of days on which she worked during that period.

Procedure regarding payment of maternity benefit.

5. (1) Any woman entitled to maternity benefit under the provisions of this Act,—

- (a) who is pregnant may, on any day, give notice either orally in person or in writing in the form prescribed by rules made under this Act to the manager of the factory that

¹The Factories Act, 1934 (XXV of 1934) was repealed and re-enacted by the Factories Act, 1948 (LXIII of 1948).

of 1939.

(Section 6.)

she expects to be confined within one month next following and may therein nominate a person for purposes of section 6 ;

- (b) who has not given the notice referred to in clause (a) and has been delivered of a child, shall, within seven days, give similar notice that she has given birth to a child.

(2) When such notice is received, the employer shall permit the woman to absent herself from the factory from the day following the date of notice in the case mentioned in clause (a) of sub-section (1) and from the day of delivery in the case mentioned in clause (b) thereof, until four weeks after the day of delivery.

(3) An employer shall pay maternity benefit to a woman entitled thereto in such one of the following ways as the woman desires, namely :—

- (i) for four weeks, within forty-eight hours of the production of a certificate signed by a medical practitioner stating that the woman is expected to be confined within one month of the date of the certificate, and for the remainder of the period for which she is entitled to maternity benefit under sub-section (1) of section 4, within forty-eight hours of the production of proof that she has given birth to a child ; or
- (ii) for the said period up to and including the day of delivery, within forty-eight hours of the production of proof that she has given birth to a child, and for the remainder of the said period, within four weeks of the production of such proof ; or
- (iii) for the whole of the said period, within forty-eight hours of the production of proof that she has given birth to a child :

Provided that a woman shall not be entitled to any maternity benefit or any part thereof, the payment of which is dependent upon the production of proof under this sub-section that she has given birth to a child, unless such proof is produced within six months of the day of her delivery.

(4) The proof required to be produced under sub-section (3) shall be either a certified extract from a birth register under the Bengal Births and Deaths Registration Act, 1873, or a certificate signed by a medical practitioner or such other proof as may be accepted by the employer.

Ben. Act
IV of 1873.

6. (1) If a woman entitled to maternity benefit under this Act dies on the day of her delivery or during the period thereafter for which she is entitled to the maternity benefit, the employer's liability under sub-section (1) of section 4 shall not, by reason of her death, be discharged, and he shall pay the amount of maternity benefit due, if the newly-born child survives her, to the person who

Payment
of mater-
nity benefit
in case of a
woman's
death.

(Sections 7—10.)

undertakes the care of the child ; and, if the child does not survive her, to the person nominated by her under sub-section (1) of section 5 or, if she has made no such nomination, to her legal representative.

(2) If a woman dies during the period for which she is entitled to maternity benefit but before giving birth to a child, the employer shall be liable only for the period up to and including the day of her death, provided that any sum already paid to her in excess of such liability under clause (i) of sub-section (3) of section 5 shall not be recoverable from her legal representative. Any amount due at the woman's death shall be paid to the person nominated by her under sub-section (1) of section 5, or if she has made no such nomination, to her legal representative.

No notice
of dis-
missal
to be given
to a
woman in
certain

7. (1) When a woman absents herself from work in accordance with the provisions of this Act, it shall not be lawful for her employer to give her notice of dismissal during such absence or on such a day that the notice will expire during such absence.

(2) (a) No notice of dismissal given without sufficient cause by an employer to a woman within a period of six months before her delivery shall have the effect of depriving her of any maternity benefit to which but for such notice she may have become entitled under this Act.

(b) If any question arises as to whether any notice of dismissal is one to which clause (a) applies, such question shall be referred to the Inspector of Factories. An appeal from the Inspector's decision shall, within sixty days thereof, lie to the Labour Commissioner whose decision shall be final.

Penalty for
working for
payment
during
permitted
period of
absence.

8. If a woman does any work for which she receives payment in cash or kind after she has been permitted by her employer to absent herself under the provisions of section 5, she shall be liable, on conviction, to a fine not exceeding ten rupees.

Penalty for
contra-
vention
of the
Act by an
employer
and appli-
cation of
fine in
payment
of compen-
sation.

9. (1) If any employer contravenes any provision of this Act, he shall, on conviction, be liable to a fine which may extend to five hundred rupees.

(2) Whenever a Court imposes a fine under this section or confirms in appeal, revision or otherwise such a sentence, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied in the payment of compensation to the woman concerned for any loss or damage caused to her by the contravention of a provision of this Act on account of which the fine has been imposed.

Penalty for
contra-
vention of
the Act
by a
woman.

10. If any woman works in any factory within four weeks after the day of her delivery, she shall be liable, on conviction, to a fine not exceeding ten rupees.

of 1939.]

(Sections 11—14.)

11. (1) No prosecution under this Act shall be instituted except by, or with the previous sanction of, the Inspector of Factories, and no such prosecution shall be instituted until the expiry of the period of appeal under sub-section (2) or, if such an appeal is preferred, unless the Labour Commissioner, by his order thereon sanctions a prosecution.

Cogni-
zance of
offences.

(2) Where the Inspector of Factories decides either to institute a prosecution under this Act or to grant sanction thereto, he shall forthwith communicate his order to the person complained against, who may, within thirty days of the date of the said order, appeal to the Labour Commissioner against such decision. The decision of the Labour Commissioner on such appeal shall be final.

(3) No Court inferior to that of a Presidency Magistrate or of a Magistrate of the First Class shall try any offence against this Act or any rules thereunder.

12. Where on an application by an employer or a woman in such behalf, the Inspector of Factories refuses either to institute a prosecution under this Act or to grant previous sanction thereto, he shall without delay communicate to the applicant his order of refusal, and an employer or a woman aggrieved by such order may, within thirty days of the date thereof, appeal to the Labour Commissioner against such order. The decision of the Labour Commissioner on such appeal shall be final.

Appeal
against
refusal to
prosecute
or grant
sanction
thereto.

13. No Court shall take cognizance of any offence against this Act or any rule thereunder unless complaint thereof has been made to the Inspector of Factories within six months of the date on which the offence is alleged to have been committed.

Limitation
of prosecu-
tion.

14. (1) The ¹[State] Government may make rules² for the purpose of carrying into effect the provisions of this Act.

Rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the preparation and maintenance of a muster roll or register or a combined muster roll and register, and the particulars to be entered in such muster roll, register or combined muster roll and register or in the register kept or deemed to have been kept under section 41 of the ³Factories Act, 1934 ;

(b) the inspection of factories for the purposes of this Act by Inspectors of Factories ;

¹See footnote 4 on p. 77, *ante*.

²For rules under this Act, see notification No. 4 Com., dated the 2nd January, 1940, published in the *Calcutta Gazette* of the 4th January, 1940, Pt. I, page 14.

³The Factories Act, 1934 (XXV of 1934), was repealed and re-enacted by the Factories Act, 1948 (LXIII of 1948).

(Section 15.)

- (c) the exercise of powers and the performance of duties by Inspectors of Factories for the purposes of this Act ;
 - (d) the method of payment of maternity benefit in so far as provision has not been made in this Act ;
 - (e) the forms of notices under clause (a) and clause (b) of sub-section (1) of section 5 ; and
 - (f) procedure to be observed in the disposal of appeals under sub-section (2) of section 7 or sub-section (2) of section 11 or section 12 ;
- (3) Any such rule may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees.
- (4) The power to make rules under this Act shall be subject to the condition of previous publication.

Abstract
of this Act
and the
rules
thereunder
to be
exhibited.

15. An abstract of the provisions of this Act and the rules thereunder in the local vernaculars shall be exhibited in a conspicuous manner by the employer in every part of a factory in which women are employed.

Bengal Act V of 1939¹

THE CALCUTTA MUNICIPAL (AMENDMENT AND VALIDATION) ACT, 1939.

REPEALED IN PART AND AMENDED .. Ben. Act XVI of 1946.

ADAPTED .. The Adaptation of Laws Order, 1950.

[29th June, 1939.]

An Act further to amend the Calcutta Municipal Act, 1923, for removal of certain doubts about the extension of term of office of the Councillors and Aldermen of the Corporation of Calcutta.

Ben. Act
III of
1923.

WHEREAS the term of office of existing elected Councillors including those appointed under section 36 of the Calcutta Municipal Act, 1923, and of the existing Aldermen of the Corporation of Calcutta was extended by notification No. 3114M., dated the 20th September 1938, issued under the proviso to section 39 of the Calcutta Municipal Act, 1923;

AND WHEREAS doubts have been raised as to the validity of the said notification owing to the language of the existing proviso to section 39 and of section 45 of the said Act;

AND WHEREAS it is expedient to remove such doubts by amending the said sections in the manner hereinafter appearing and to give retrospective effect to the said amendments;

AND WHEREAS it is also expedient to validate the said notification.

It is hereby enacted as follows :—

1. This Act may be called the Calcutta Municipal (Amendment and Validation) Act, 1939. Short title.

2, 3, 4 and 5.—[*Repealed by section 2 and the Schedule to Bengal Act XVI of 1946.*]

6. The notification No. 3114M., dated the 20th September, 1938, which was issued under the proviso to section 39 of the said Act,² shall be deemed to be as valid as if it had been issued under the proviso to the said section as ³[amended] by section 3 of this Act and is hereby declared to have full force and effect.

Validation of notification extending the term of office of Councillors and Aldermen.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 22nd December, 1938, Part IVB, page 193.

For proceedings of the Bengal Legislative Council, see the proceedings of the meetings of the Bengal Legislative Council held on the 2nd, 12th and 17th May, 1939, and for proceedings of the Bengal Legislative Assembly, see the proceedings of the meetings of the Bengal Legislative Assembly held on the 31st March, 1939.

²That is, the Calcutta Municipal Act, 1923 (Ben. Act III of 1923). The Calcutta Municipal Act, 1923 has been repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951).

³The word within square brackets was substituted for the word "substituted" by section 2 and the Schedule to the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).

(Section 7.)

Power of
State
Govern-
ment in
respect
of the next
general
election
to be held
before the
expiry
of the
extended
term of
office of
the Coun-
cillors and
Aldermen.

7. If any difficulty arises as to the preparation or publication of the electoral rolls for the purpose of, or the holding of, the next general elections to be held under section 45 of the said Act¹ before the expiration of the term of office extended under the proviso to section 39 of the said Act¹, the ²[State] Government may by order authorise any matter or thing to be done which appears to them to be necessary for the proper preparation or publication of the rolls or for the proper holding of the elections.

¹That is, The Calcutta Municipal Act, 1923 (Ben. Act III of 1923).

²Substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

Bengal Act X of 1939¹

THE BENGAL RURAL POOR AND UNEMPLOYED RELIEF ACT, 1939.

AMENDED

..

..

Ben. Act II of 1941.

ADAPTED

..

..

The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

The Adaptation of Laws Order, 1950.

[20th July, 1939.]

An Act to provide for the relief of the rural poor and unemployed.

WHEREAS it is expedient to provide for the relief of the rural poor and unemployed;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Rural Poor and Unemployed Relief Act, 1939.

Short title, extent and commencement.

Ben. Act
V of 1919.

(2) It extends to those parts of ²[West Bengal] in which the Bengal Village Self-Government Act, 1919, is in force.

³(3) It shall come into force on such date as the ⁴[State] Government may, by notification in the *Official Gazette*, appoint.

2. In this Act, unless there is anything repugnant in the subject or context, the words “chaukidar,” “circle officer,” “district board,” “district magistrate,” “union,” “union board” and “union rate” shall have the same meanings as in the Bengal Village Self-Government Act, 1919.

Definitions.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 26th August, 1937, Part IVB, pages 34-37; the report of the Select Committee was presented to the Bengal Legislative Council on the 13th February, 1939; for Proceedings of the Bengal Legislative Council, see the Bengal Legislative Council Proceedings, 1937, volume II, page 291, *ibid* 1938, volume II, pages 364-380, *ibid* 1939, volume I, page 139 and pages 224-241 and *ibid*, volume II, pages 360 and 361; and for Proceedings of the Bengal Legislative Assembly, see the Bengal Legislative Assembly Proceedings, 1939, volume LIV, No. 5, pages 38-66.

²The words within square brackets were substituted for the word “Bengal” by paragraph 2 of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³The Act was brought into force on the 1st September, 1939, *vide* notification No. 8776Misc., dated the 10th August, 1939, published in Part I, page 2035, of the *Calcutta Gazette* of the 17th August, 1939.

⁴The word within square brackets was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Sections 3—5.)

Poor Fund
and Poor
Boxes.

3. (1) In every union there shall be a Poor Fund (hereinafter referred to as the Fund), to which shall be paid all sums received as voluntary contributions and all other receipts referred to in section 13.

(2) For the purpose of collecting such contributions and in addition to such other methods of collection as may be determined by the committee referred to in section 4, Poor Boxes shall in the manner determined by the committee, be placed in the office of the union board and in such other places in the union as the committee may determine.

(3) There shall be two ¹[separate] locks for each Poor Box, the key of one of which shall remain in the custody of the President of the Committee and the key of ²[the other] in the custody of such member of the committee as may be appointed by the committee for this purpose.

(4) The Poor Box shall be opened in the presence of at least three members of the committee, and the contents thereof counted and entered in Form I in the Schedule to this Act under the initial of the members present.

(5) Subscriptions and contributions otherwise collected shall also be entered in Form I in the Schedule to this Act and to each subscriber or contributor there shall be given in writing a receipt for the amount received from him.

Poor Fund
commit-
tee.

4. (1) The Fund shall, in each union, be managed by a committee, which shall consist of the members of the union board *ex officio*, together with such other persons, not exceeding five in number, as may be co-opted by the members of the union board from among contributors to the Fund.

(2) The president and vice-president of the union board shall be *ex officio* president and vice-president, respectively, of the committee.

(3) At any meeting of the committee three members thereof shall form a quorum.

Custody
and
accounts
of the
Fund.

5. (1) All contributions to the Fund shall remain in the custody of the president of the committee.

(2) The accounts of the Fund shall be maintained by the president of the committee in Form I in the Schedule to this Act and shall be audited annually by the circle officer at the times at which the accounts of the union board are audited.

¹This word within square brackets was substituted for the words "different kinds of" by section 2(a) of the Bengal Rural Poor and Unemployed Relief (Amendment) Act, 1941 (Ben. Act II of 1941).

²These words within square brackets were substituted for the words "another lock" by section 2(b), *ibid.*

of 1939.]

(Sections 6—8.)

6. (1) Every committee shall prepare and maintain a poor and an unemployed list (hereinafter referred to as the List) in which shall be entered—

Poor and unemployed list.

(a) the names of all persons (other than dependents) within the union who are not assessed to union rate; and

(b) the names of all wage-earners (other than dependents) who have been unemployed for a period exceeding one month and have no means of subsistence other than their wages.

(2) Any person whose name has not been entered in the List, may apply to the committee to have his name so entered and the committee shall on such application pass such orders consistent with this section as it thinks fit.

(3) The List shall be prepared and maintained in Form II in the Schedule to this Act, and shall, after such inquiry as the committee thinks fit, be checked and revised in all its particulars by the committee once in every quarter.

(4) The List shall be open to inspection by the local public during the office hours at the office of the union.

7. During periods of distress and scarcity, and at such periods of the year as may be decided by the committee, each *chaukidar* shall, within the area of his jurisdiction, visit daily the houses of all persons named in the List, and if he finds that any such person or any dependent of any such person has been without food for a period of more than twenty-four hours, he shall immediately report the fact to the president of the committee or, in his absence, to the vice-president thereof or in the absence of both the president and the vice-president to such other member of the committee as may be authorized by the committee to receive such reports.

Reports by *chaukidars*.

8. (1) On receipt of a report submitted under section 7 or by any other reliable person, the president or vice-president or such other member of the committee, as the case may be, after such inquiry, if any, as he thinks fit, and with the least possible delay, shall grant relief from the Fund to each person whose name has been so reported.

Payment of relief.

(2) Such relief shall be granted at the rate of not more than two annas *per diem* for each person of or above the age of twelve years and half an anna *per diem* for each person below the age of twelve years, and shall not ordinarily be granted for a period exceeding five days at any one time:

¹[Provided that the committee may, at a meeting thereof, direct that such relief be granted—

(i) for a period exceeding five, but not exceeding ten, days at any one time;

(ii) in the form of clothing or other articles.]

¹This proviso within square brackets was substituted for the two original provisos by section 3 of the Bengal Rural Poor and Unemployed Relief (Amendment) Act, 1941 (Ben. Act II of 1941).

(Sections 9—13.)

Issue of
loans.

9. (1) If any person of or above the age of sixteen years whose name has been reported under section 7 of section 8 is able-bodied, the committee shall attempt to provide him with employment and may, in addition to any relief granted to him under section 8, advance to him from the Fund by way of loan a sum not exceeding five rupees, for the purpose of enabling him to secure employment.

(2) Every such loan shall be repayable without interest at any time within six months of the date of issue.

(3) If any such loan is not so repaid, it shall be realized in the manner provided for the realization of arrears of union rate under the provisions of the Bengal Village Self-Government Act, 1919, together with interest calculated at a rate *per annum* of six and a quarter *per centum* : Ben. Act V of 1919.

Provided that any such loan or portion thereof may be remitted by the committee if two-thirds of the members of the committee so recommend in writing.

(4) An account of every loan shall be maintained in Form III in the Schedule to this Act.

Action
where the
Fund
proves in-
adequate.

10. If at any time the committee is unable from the Fund to meet the needs of such poor or unemployed persons within the union as require relief, it shall report the fact to the district magistrate and shall send to the subdivisional magistrate a copy of such report; and at the same time the president of the committee shall summon a meeting of the inhabitants of the union for the purpose of securing contributions to the Fund.

Power to
fine and
dismiss
chauki-
dars.

11. Any *chaukidar* failing to submit, in the manner provided, the report referred to in section 7 shall be liable to be punished with fine or, in cases of gross neglect of duty, with dismissal, in the manner provided in the Bengal Village Self-Government Act, 1919, for the fining and dismissal of *chaukidars*.

Quarterly
state-
ment.

12. A statement in Form IV in the Schedule to this Act shall be submitted by the committee to the circle officer at the end of each quarter.

Power of
State
Govern-
ment,
district
boards and
union
boards to
contribute
to the
Fund.

13. The ¹[State] Government, and any district board or union board to the extent of its jurisdiction, may contribute to the Fund at any time, and any such contribution shall be disbursed by the committee in accordance with any conditions that may be attached to the contribution.

¹The word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Sections 14, 15 and the Schedule.)

14. The committee shall collect and submit such statistics Statistics, as may from time to time be called for by the district board or the district magistrate.

15. The ¹[State] Government may make rules² for the purpose Rules. of giving effect to the objects of this Act.

THE SCHEDULE.

FORM I.

(Section 5.)

Date.	Opening balance.	Receipts (including loans re- paid).		Total.	Expenditure (including loans issued).				Total.	Balance.
		Source of receipt.	Amount.		Name and address of payee.	Signature or left thumb impression of payee.	Amount of relief.	Amount of loan.		
1	2	3	4	5	6	7	8	9	10	11

FORM II.

[Section 6 (3).]

Part I.

Persons not assessed to union rate.

Name and father's name.	Address.	Occupation.	Dependents.				
			Able-bodied.		Disabled.		Under 12 years.
			Over 12 years.		Over 12 years.		
			M.	F.	M.	F.	
1	2	3	4	5	6	7	8

¹The word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²For rules made in exercise of the powers conferred by this section, see notification No. 6526Misc., dated the 14th July, 1941, published in the *Calcutta Gazette*, of the 17th July, 1941, Part I, page 1779.

(The Schedule.)

Part II.

Unemployed persons.

Name and father's name.	Address.	Occupation.	Dependents.				
			Able-bodied.		Disabled.		Under 12 years.
			Over 12 years		Over 12 years.		
			M.	F.	M.	F.	
1	2	3	4	5	6	7	8

FORM III.

[Section 9(4)]

Issue.			Recoveries.			Balance.
Date.	Name and address.	Amount.	Date.	Details of receipt.	Amount.	
1	2	3	4	5	6	7

FORM IV.

(Section 12)

Opening balance.	Receipts.			Expenditure.			Closing balance.
	Subscriptions.	Loans repaid.	Total.	Relief granted.	Loans issued.	Total.	
1	2	3	4	5	6	7	8

Bengal Act XIII of 1939¹

THE BENGAL TENANCY (SECOND AMENDMENT) ACT, 1939.

REPEALED IN PART	..	Ben. Act XVI of 1946.
AMENDED	..	.. Ben. Act XVIII of 1940.
ADAPTED	..	.. The Adaptation of Laws Order, 1950.

[24th August, 1939.]

An Act further to amend section 52 of the Bengal Tenancy Act, 1885.

VIII of
1885.

WHEREAS it is expedient further to amend section 52 of the Bengal Tenancy Act, 1885, in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. This Act may be called the Bengal Tenancy (Second Amendment) Act, 1939. Short title.

2. [*Repealed by sec. 3 and the Second Schedule to the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).*]

3. (1) Notwithstanding anything contained in any other law— Applica-
tion.

(a) the provisions of section 52 of the Bengal Tenancy Act, 1885, as amended by this Act shall apply to all suits instituted thereunder on or after the date of the commencement of this Act, and also, subject to such conditions as may be prescribed, to all suits under clause (a) of sub-section (1) of that section which are pending on the said date, and

(b) ²[if a decree has been passed on or after the twenty-seventh day of August, 1937, and before the commencement of this Act in a suit under the said clause], the Court shall, on application accompanied by the prescribed fee and made within one year from the commencement of this Act by a tenant against whom such decree has been passed, set aside the decree and restore and rehear the suit in the prescribed manner and in accordance with the provisions of the said section as amended by this Act.

(2) In this section “prescribed” means prescribed by rules made by the ³[State] Government hereunder.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 22nd September, 1938 Part IVB., page 185 ; for Proceedings of the Bengal Legislative Council, see the Proceedings of the meetings of the Bengal Legislative Council held on the 8th August, 1938, 8th, 10th and 28th February and 6th March, 1939 ; for Proceedings of the Bengal Legislative Assembly see the Proceedings of the meetings of the Bengal Legislative Assembly held on the 31st March and the 5th April, 1939.

²The words and figures within square brackets were substituted for the original words by s. 6 of the Bengal Tenancy (Amendment) Act, 1940 (Ben. Act XVIII of 1940).

³The word within square brackets was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

Bengal Act XV of 1939

THE BENGAL TANKS IMPROVEMENT ACT, 1939.

CONTENTS.

SECTION.

1. Short title, extent and commencement.
2. Definitions.
3. Requisition by Collector to carry out improvements in certain tanks.
4. Declaration of a tank to be a derelict irrigation work.
5. Power to Collector in respect of a derelict irrigation work.
6. Order for possession of, and improvements in, a derelict tank.
- 6A. Order for possession of lands adjoining a derelict tank for carrying out improvements in such tank.
7. Cancellation of order under section 6.
8. Authorised person to retain possession of a derelict tank for a period not exceeding twenty-five years.
9. Owner to be restored to possession on certain conditions.
- 9A. Authorised person to retain possession of land adjoining a tank during the period of possession of such tank.
- 9B. Restoration of possession of land adjoining a derelict tank and the retaking of possession of such land.
- 9C. Restoration of possession of land adjoining a derelict tank on the restoration of possession of such tank under section 9.
10. Authorised person not liable to pay rent or compensation.
11. Possession by an authorised person not to affect the rights or liabilities of other persons.
12. Authorised person to pay rent to owner and compensation to person other than the owner dispossessed by him.
13. Authorised person to pay compensation to persons who have right to fish in the tank, etc., on payment.
14. Authorised person to pay compensation to cultivators who hold a lease of the bed of a tank.
- 14A. Payment of compensation to persons having rights in lands adjoining a tank of which possession is taken under this Act.
15. Permission of the authorised person necessary to use or occupy the tank, etc.
16. Rights to use the water of the tank.
- 16A. Maximum irrigation area.
- 16B. Preparation of list.
17. Payment and rate of fees.
- 17A. Passage of water.
18. Power of authorised person to lease out the tank, etc.
19. Bar to transfer of tank except as provided in this Act.
- 19A. Bar to acquisition of occupancy rights in lands leased out under section 18.
20. Application of the Act to tank improved as a relief measure.
21. Restoration of possession of tank.
22. Record-of-rights in respect of derelict tanks.
23. Application of the Act to certain tanks.
24. Costs.
25. Decision of disputes.
26. Appeal against action of authorised person.
27. Other appeals.
28. Procedure in proceedings under section 27.
29. Order of Civil Court not to operate during period of possession.
30. Bar to jurisdiction of Civil Courts.
31. Power to enter land to make survey, etc.
32. Power to compel production of statements and documents.
33. Power to enforce attendance of witnesses and production of documents.
34. Power to authorise subordinate officer to exercise Collector's powers.
35. Penalty.
36. No reduction of revenue for anything done under this Act.
37. Power to make rules.

Bengal Act XV of 1939¹

THE BENGAL TANKS IMPROVEMENT ACT, 1939.

AMENDED	..	..	{ Ben. Act V of 1946. West Ben. Act XXIV of 1948. West Ben. Act XIX of 1949.
ADAPTED	..	..	{ The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. The Adaptation of Laws Order, 1950.

[12th October, 1939.]

An Act to provide for the improvement of tanks in Bengal for purposes of irrigation.

WHEREAS it is expedient to provide for the improvement of tanks in Bengal for purposes of irrigation ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Tanks Improvement Act, 1939.

(2) It extends to the whole of ²[West Bengal].

Short
title,
extent
and com-
mence-
ment.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 6th August, 1937, page 217 : and for Report of the Select Committee, see the *Calcutta Gazette*, dated the 28th July, 1938, Part IVA, pages 151-159; and for proceedings of the Bengal Legislative Assembly, see the Bengal Legislative Assembly Proceedings—1937, Vol. LIII, No. 2, pages 314-320, 1938, Vol. LIII, No. 1, page 66, and 1938, Vol. LIII, No. 3, page 173 and pages 222-237 ; and for proceedings of the Bengal Legislative Council, see the Bengal Legislative Council Debates—1939, Vol. I, page 56, page 137, pages 451-456 and pages 467-485, 1939, Vol. II, pages 168-169, page 526 and page 954.

²The words within square brackets were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

(Section 2.)

¹(3) It shall come into force in such areas on such dates as the ²[State] Government may, by notification in the *Official Gazette*, direct.

Defini-
tions.

2. In this Act, unless there is anything repugnant in the subject or context,—

³(a1) “agricultural land” includes land used for the growing of vegetables and the like and also waste land which is capable of cultivation but does not include a fruit garden, an orchard, any temple, mosque or homestead land ;

(1) “authorised person” means the Collector, a local authority, co-operative society, or any other person who takes possession of a tank under the provisions of this Act and includes the successors in interest of such a person ;

(2) “Collector” includes a magistrate in charge of a subdivision of a district and any officer appointed by the ²[State] Government to exercise all or any of the functions of a Collector under this Act ;

¹The Act was brought into force in such areas and on such dates as follows :—

- (1) On the 22nd November, 1940, in the districts of Birbhum, Bankura, Burdwan and Murshidabad (*vide* notification No. 10772Misc., dated the 19th November, 1940, published in the *Calcutta Gazette*, dated the 28th November, 1940, Part I, page 3215) ;
- (2) On the 10th April, 1941, in the district of Malda (*vide* notification No. 3751Misc., dated the 5th April, 1941, published in the *Calcutta Gazette*, dated the 10th April, 1941, Part I, page 877) ;
- (3) On the 6th May, 1943, in the district of Nadia (*vide* notification No. 6467Misc., dated the 1st May, 1943, published in the *Calcutta Gazette*, dated the 13th May, 1943, Part I, page 993) ;
- (4) On the 22nd June, 1944, in the district of Midnapore (*vide* notification No. 10728Misc., dated the 14th June, 1944, published in the *Calcutta Gazette*, dated the 22nd June, 1944, Part I, page 829) ;
- (5) On the 17th August, 1944, in the district of Hooghly (*vide* notification No. 13826Misc., dated the 12th August, 1944, published in the *Calcutta Gazette*, dated the 17th August, 1944, Part I, page 1043) ;
- (6) On the 28th November, 1945, in the district of Dinajpur (*vide* notification No. 64T.I., dated the 15th November, 1945, published in the *Calcutta Gazette*, dated the 29th November, 1945, Part I, page 1077) ;
- (7) On the 1st September, 1948, in the district of 24-Parganas (*vide* notification No. 5097T.I., dated the 12th August, 1948, published in the *Calcutta Gazette*, dated the 26th August, 1948, Part I, page 1156).

²The word within square brackets was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³This new clause was inserted by section 2(a) of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

of 1939.]

(Sections 3, 4.)

Ben.
Act XXI
of 1940.

- (3) "co-operative society" means a society registered under ¹[the Bengal Co-operative Societies Act, 1940];
- (4) "derelict tank" means a tank which has been declared to be a derelict irrigation work under section 4;
- (5) "period of possession" means the period from the time when possession is first taken of a tank under section 5 or section 6 until the time when possession thereof is restored under section 21;
- ²(5a) "person having control over a tank" does not include a person by whom the tank is held for a limited time and whose interest in the tank is not transferable;
- (6) "prescribed" means prescribed by rules made under this Act;
- (7) "tank" means a reservoir, or place which has been used as a reservoir, for the storage of water whether formed by excavation or by the construction of one or more embankments or place where water naturally accumulates, and includes any part of a tank and the banks thereof except such portions of the banks as are homestead garden or orchard land.

3. If the Collector is of opinion that any tank has fallen into disrepair or disuse, he may serve a notice in the prescribed form and manner on the person having control over the tank ³[requiring such person to intimate to him within a period specified in the notice if such person is willing to carry out and in case such person is so willing then,] to carry out within a period specified in the notice such improvements of the tank as the Collector considers necessary for the proper utilisation of the tank for purposes of irrigation.

Requisition by Collector to carry out improvements in certain tanks.

4. (1) ⁴[If the person having control over the tank does not send any intimation or sends any intimation to the Collector within the period fixed under section 3 that he is not willing to carry out the improvements referred to in that section or if such person sends any intimation to the Collector within such period that he is willing to carry out the improvements but fails to carry out the improvements] to the satisfaction of the Collector within

Declaration of a tank to be a derelict irrigation work.

¹These words and figures within square brackets were substituted for the words and figures "the Co-operative Societies Act, 1912" by sec. 2 and the Schedule to the West Bengal Repealing and Amending Act, 1949 (West Ben. Act XIX of 1949).

²This new clause was inserted by section 2(b) of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

³These words within square brackets were substituted for the words "requiring him" by section 3, *ibid*.

⁴The words and figure within square brackets were substituted for the words and figure "If the improvements referred to in section 3 are not carried out" by section 4(a)(i), *ibid*.

(Sections 5, 6.)

the period specified in the notice issued under that section or within such further period as the Collector may, on application made to him in this behalf, think fit to allow, the Collector may, [by a notice served in the prescribed manner on] the person having control over the tank and otherwise published in the prescribed form and manner, declare the tank to be a derelict irrigation work.

(2) Every notice issued under sub-section (1) shall state the boundaries of the tank which is declared to be a derelict irrigation work [or the number entered in the record-of-rights finally published under Chapter X of the Bengal Tenancy Act, 1885, of the survey plot comprising such tank.]

VIII of
1885.

(3) A copy of every notice published under sub-section (1) shall be posted up in a conspicuous place near the tank, together with an intimation that any objections to the [confirmation] of the notice received by the Collector within one month from the date when it is so posted up, will be taken into consideration.

(4) On the expiry of the said period of one month, the Collector, after considering the objections, if any, shall confirm or withdraw the notice.

(5) A notice published under this section shall, unless and until it is withdrawn, be conclusive evidence of the fact that the tank to which it relates is a derelict irrigation work within the meaning of this section.

Power to
Collector
in respect
of a dere-
lict irri-
gation work.

5. After the notice declaring a tank to be a derelict irrigation work has been confirmed under section 4 the Collector, if he thinks fit, may at any time—

- (a) take possession of the tank and carry out the improvements specified in the notice under section 3, or
- (b) authorise under section 6 a local authority, co-operative society, or any other person interested to take such action.

Order for
possession
of, and
improve-
ments in,
a derelict
tank.

6. (1) Any local authority or co-operative society, or any other person who, in the opinion of the Collector, has an interest in a derelict tank, may, if authorised by the Collector by an order in writing in this behalf, take possession of such tank and carry out the improvements specified in the notice under section 3.

*The words within square brackets were substituted for the words "by a notice to" by section 4(a)(ii), of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

*The words and figures within square brackets were added by section 4 (b), *ibid.*

*The word within square brackets was substituted for the word "issue" by section 4(c), *ibid.*

in 1936.]

(Sections 6A, 7.)

(2) In making an order under sub-section (1) the Collector shall, except for sufficient reason to be recorded in writing, give preference to ¹[the sole owner or] any co-sharer owner of the tank who has submitted an application stating that he is willing to carry out the said improvements or he may make an order in favour of more than one such co-sharer owner jointly.

(3) An order under sub-section (1) shall be in such form and shall contain such particulars and conditions as may be prescribed.

²6A. (1) If any authorised person considers it necessary for the purpose of carrying out the improvements in a derelict tank to take possession of any land adjoining such tank, he may,—

Order for possession of lands adjoining a derelict tank for carrying out improvements in such tank.

(a) if he is the Collector, take possession of such land by order in writing, and

(b) if he is not the Collector, apply in the prescribed manner to the Collector to be empowered to take possession of such land and the Collector may, if he is satisfied after considering the application that such land is required for carrying out the improvements, empower the authorised person by order in writing to take possession of such land :

Provided that the Collector shall not take possession or empower any authorised person to take possession of such land without giving in the prescribed manner the person in possession of such land reasonable opportunity of making any representation he may like to make and without considering any representation so made.

(2) Every order made under sub-section (1) shall specify the boundaries of the land to which it relates or the number entered in the record-of-rights finally published under Chapter X of the Bengal Tenancy Act, 1885, of the survey plot comprising such land and shall be in such form as may be prescribed.

VIII of 1885.

7. (1) ³[If any authorised person other than the Collector—]

Cancellation of order under section 6.

⁴(a) fails to carry out the improvements to the satisfaction of the Collector in accordance with the conditions referred to in sub-section (3) of section 6, ⁵[or]

¹The words within square brackets were inserted by section 5 of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

²This new section was inserted by section 6, *ibid*.

³The words within square brackets were substituted for the words "If any authorised person—" by section 7(1) (a), *ibid*.

⁴This new clause was substituted for the original clause by section 7(1) (b), *ibid*.

⁵The word within square brackets was added by section 2 and the First Schedule to the West Bengal Repealing and Amending Act, 1949 (West Ben. Act XIX of 1949).

(Section 8.)

- (b) fails, in the opinion of the Collector, to proceed with the improvements with due diligence or to maintain the tank in proper condition, or
- (c) with or without the permission of the Collector gives up possession of the tank or abandons the work of improvement, or
- (d) is, in the opinion of the Collector, guilty of any serious negligence or misconduct in relation to the tank or to persons having any right or interest in the tank or in the use of water thereof, or
- (e) fails to comply with any order passed under section 26 or section 27,

the Collector may cancel the order made under section 6, ¹[as well as any order made under clause (b) of sub-section (1) of section 6A] and thereupon all rights and powers of the said authorised person in respect of the tank ²[and in respect of any land of which possession is taken as a result of an order made under clause (b) of sub-section (1) of section 6A] shall cease and determine, and the Collector shall take possession of the tank ³[and such land].

(2) After taking possession of the tank ⁴[and such land] under sub-section (1) the Collector shall either appoint another authorised person to carry out the improvements or carry them out himself.

Authorised person to retain possession of a derelict tank for a period not exceeding twenty-five years.

⁵8. Subject to the provisions of this Act, the Collector or an authorised person shall be entitled to remain in possession of a derelict tank of which possession has been taken under the provisions of this Act for such period not exceeding twenty-five years from the date on which possession of the derelict tank was taken under section 5 or section 6 as may, in the opinion of the Collector, be necessary to recover the amount referred to in sub-section (4) of section 17 :

Provided that the Collector may, after considering the views of the authorised person, if any, and for reasons to be recorded in writing, vary such period from time to time subject to the maximum limit of twenty-five years.

¹The words, figures, letters and brackets within square brackets were inserted by section 7(1) (c) of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

²The words, figures, letters and brackets within square brackets were inserted by section 7(1) (d), *ibid.*

³The words within square brackets were added by section 7(1) (e), *ibid.*

⁴The words within square brackets were inserted by section 7(2), *ibid.*

⁵This new section was substituted for the original section by section 8, *ibid.*

of 1939.]

(Sections 9—9B.)

9. Notwithstanding anything contained in section 8, the Collector in his discretion may, at any time within the period determined under the said section, restore to possession of the tank the person recorded as entitled to possession thereof in the record-of-rights referred to in section 22 or his successors in interest, provided that—

Owner to be restored to possession on certain conditions.

¹(a) such person pays to the Collector so much of the costs incurred up to that time both by the authorised person in carrying out the required improvements in the tank and by the Collector in carrying out the purposes of this Act in respect of the tank as remains unrecovered after realisation by the authorised person under this Act of the fees referred to in section 17 or of any sum under any lease referred to in section 18, together with interest on the costs so remaining unrecovered at a rate not exceeding six and a quarter *per centum per annum*, and

(b) he undertakes to the satisfaction of the Collector to carry out any remaining improvements specified in the notice under section 3 within such period as the Collector may determine.

²9A. An authorised person shall be entitled to remain in possession of any land adjoining a derelict tank of which possession is taken under section 6A as long as such person remains in possession of such derelict tank under section 8.

Authorised person to retain possession of land adjoining a tank during the period of possession of such tank.

³9B. (1) Notwithstanding anything contained in section 9A, if the person recorded as entitled to possession of any land adjoining a derelict tank in the record-of-rights referred to in section 22 or his successor in interest is not the person recorded as entitled to possession of such derelict tank in the record-of-rights referred to in the said section or his successor in interest, then the Collector may, at the request of the person so recorded as entitled to possession of such land or his successor in interest or of the authorised person at any time after the required improvements in the tank have been completed, by an order in writing, restore the possession of such land to the person so recorded as entitled to possession of such land or to his successor in interest, although the possession of the tank by the authorised person has not terminated, and when

Restoration of possession of land adjoining a derelict tank and the re-taking of possession of such land.

¹This new clause was substituted for the original clause by section 9 of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

²New sections 9A, 9B and 9C were inserted by section 10, *ibid*.

(Section 9C.)

the possession of such land is so restored all rights in the land which existed prior to the time when possession was taken of the land under section 6A, shall be revived :

Provided that before the Collector takes any action under this sub-section at the request of any person other than the authorised person, the Collector shall give the authorised person a reasonable opportunity of making any representation he may like to make and the Collector shall consider any representation so made.

(2) The person to whom the possession of such land has been restored under sub-section (1) shall not use it in such manner as may cause damage to the banks of the derelict tank or may affect the use of the tank for the purposes of irrigation.

(3) If the person referred to in sub-section (2) fails, in the opinion of the Collector, to comply with the provisions of that sub-section, the Collector may,—

(a) again empower the authorised person by an order in writing to take possession of such land whereupon the authorised person shall forthwith take possession thereof, or

(b) if he is the authorised person, himself again take possession of such land by order in writing,

and the authorised person so taking possession of such land again shall retain such possession as long as he remains in possession of the tank.

(4) Every order made under sub-section (3) shall specify the boundaries of the land to which it relates or the number entered in the record-of-rights finally published under Chapter X of the Bengal Tenancy Act, 1885, of the survey plot comprising such land and shall be in such form as may be prescribed.

VIII of
1885.

Restoration of possession of land adjoining a derelict tank on the restoration of possession of such tank under section 9.

190. When the possession of a derelict tank is restored by the Collector under section 9, the Collector shall at the same time restore the possession of any land adjoining such tank of which possession was taken under section 6A and has not already been restored under sub-section (1) of section 9B or of which possession was retaken under sub-section (3) of section 9B to the person recorded as entitled to possession of such land in the record-of-rights referred to in section 22 or to his successor in interest :

Provided that where the person to whom the possession of the tank is restored under section 9 is not the person recorded as entitled to possession of such land in the said record-of-rights or his successor in interest, the possession of such land shall not be so restored until the improvements, if any, required to be carried out in the tank under clause (b) of the proviso to section 9 have been completed if the person to whom the possession of the tank is

¹See footnote 2 on page 121, ante.

of 1939.]

(Sections 10—12.)

so restored agrees to pay the person so recorded as entitled to possession of such land the compensation which would have been payable by the authorised person under sub-section (1) of section 14A if such authorised person had continued to be in possession of such land.

10. An authorised person shall not be liable to pay any rent or compensation in respect of his possession of a derelict tank ¹[or any land of which possession is taken under section 6A or is retaken under sub-section (3) of section 9B] except as expressly provided in this Act.

Authorised person not liable to pay rent or compensation.

11. Save as otherwise expressly provided in this Act, the possession of a derelict tank ²[or of any land adjoining a derelict tank under this Act] by an authorised person shall not affect the right or liability of any other person to receive or pay rent in respect of the said tank ³[or land] or in respect of any right or interest therein :

Possession by an authorised person not to affect the rights or liabilities of other persons.

Provided that where rent ⁴[in respect of the tank] was, at the time when possession was first taken of the tank under this Act, payable by any person solely in respect of a right to use the water of the tank for irrigation purposes the liability to pay such rent shall cease and determine from the date on which such possession was taken.

12. ⁵(1). Where a derelict tank is, at the time of the taking of possession thereof by an authorised person, in the actual possession of the owner of the tank, the authorised person shall pay, during the period he remains in possession, to such owner at such times and in such manner as may be prescribed, such rent as the Collector, after such inquiry as he thinks fit, may determine :

Authorised person to pay rent to owner and compensation to person other than the owner disposed by him.

Provided that where the authorised person is the owner of the tank in actual possession thereof, no such payment of the rent determined by the Collector under this sub-section shall be necessary; but the amount of such rent shall be included in and form part of the costs incurred or likely to be incurred by the authorised person in carrying out the required improvements in the tank.

⁵(2) Where a derelict tank is, at the time of the taking of possession thereof by an authorised person, in the actual possession of any person other than the owner of the tank, the authorised

¹The words, figures, letters and brackets within square brackets were inserted by section 11 of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

²The words within square brackets were inserted by section 12(a), *ibid.*

³The words within square brackets were inserted by section 12(b), *ibid.*

⁴The words within square brackets were inserted by section 12(c), *ibid.*

⁵The original section 12 was renumbered as sub-section (2) of that section and before the said section, as so renumbered, new sub-section (1) was inserted by section 13, *ibid.*

(Sections 13, 14.)

person shall, at such times and in such manner as may be prescribed, pay to the person dispossessed by him such compensation as the Collector, after such inquiry as he thinks fit, may determine. Such compensation shall not be less than the amount of the rent which the person so dispossessed is liable to pay in respect of the tank, and shall be deemed to be a full and complete satisfaction for all loss suffered by such person as a result of the interference with his possession.

Authorised person to pay compensation to persons who have right to fish in the tank, etc., on payment.

13. Where, at the time of the taking of possession of a derelict tank by an authorised person, any person has a right, on payment of any rent or charge, to catch fish in the tank or to take fruits from trees on, or other produce from, the banks of the tank the authorised person shall, at such times and in such manner as may be prescribed, pay to the said person such compensation as the Collector, after such inquiry as he thinks fit, may determine. Such compensation shall not be less than the amount of the rent or charge which the said person continues to be liable to pay to the owner or any tenant of the tank and shall be deemed to be a full and complete satisfaction for all loss suffered by such person as a result of the interference with the exercise of his right.

Authorised person to pay compensation to cultivators who hold a lease of the bed of a tank.

14. (1) Where the bed or any part of the bed of a tank has been leased out to cultivators for agricultural purposes the authorised person shall pay compensation to such cultivators, and thereupon such lease shall be terminated. The amount of compensation payable to each cultivator shall be such amount as the Collector, after such inquiry as he thinks fit, deems fair and equitable¹ * * * :

²Provided that the compensation payable to such cultivators shall not be less than an amount which bears to the total amount of *salami*, as determined by the Collector to have been paid for obtaining the lease, the same ratio as the unexpired period of lease bears to the total period of such lease :

³Provided further that where no period of lease is expressly mentioned or agreed to between the parties concerned the total period of lease shall be taken as twelve years.

(2) The amount of compensation determined by the Collector under sub-section (1) shall be paid in the prescribed manner and within the prescribed time to the authorised person by the landlord who granted the lease. If the landlord makes default in such payment the same shall be recoverable from the landlord by the Collector as a public demand and paid by him to the authorised person.

¹The words "but not less than the *salami* paid by such cultivator for the lease" were omitted by section 14(2) of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

²These provisos were added by section 14(5), *ibid.*

of 1939.]

(Section 14A.)

14A. (1) Where the owner of a derelict tank is not the owner of any land adjoining such tank of which possession is taken under section 6A, or retaken under sub-section (3) of section 9B, the authorised person shall, at such times and in such manner as may be prescribed, pay to the person in possession of such land at the time of taking or retaking possession thereof such compensation as the Collector, after such inquiry as he thinks fit, may determine. Such compensation shall not be less than the amount of the rent which the person so dispossessed is liable to pay in respect of the land and shall be deemed to be a full and complete satisfaction for all loss suffered by such person as a result of interference with his possession.

Payment of compensation to persons having rights in lands adjoining a tank of which possession is taken under this Act.

(2) Where the owner of a derelict tank is also the owner of any land adjoining such tank of which possession is taken under section 6A, or retaken under sub-section (3) of section 9B, the authorised person shall—

(a) in the case where such land is in the actual possession of the owner thereof, pay at such times and in such manner as may be prescribed to such owner such rent as the Collector, after such inquiry as he thinks fit, may determine :

• Provided that where the authorised person is the owner of such land in actual possession thereof, no such payment of the rent determined by the Collector under this clause shall be necessary ; but the amount of such rent shall be included in and form part of the costs incurred or likely to be incurred by the authorised person in carrying out the required improvements in the tank ; and

(b) in other cases, pay at such times and in such manner as may be prescribed to any person to whom such land has been leased out and who holds such land as lessee at the time such possession is taken or retaken and to every other person having at that time, on payment of any rent or charge, any right in such land, such compensation as the Collector, after such inquiry as he thinks fit, may determine, and such compensation shall not be less than the amount of the rent or charge which the person to whom the compensation is paid continues to be liable to pay to the owner or the tenant of such land and shall be deemed to be a full and complete satisfaction for all loss suffered by every such person as a result of the interference with the exercise of his right.

¹This new section was inserted by section 15 of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

(Sections 15—16A.)

Permis-
sion of
the
authorised
person
necessary
to use or
occupy
the tank,
etc.

¹15. (1) During the period of possession no person shall without the permission of the authorised person use or occupy the tank or use the water thereof except for drinking and other domestic purposes or catch fish in the tank or take fruits from trees on, or other produce from, the banks of the tank, except such portions of the banks as are homestead, garden or orchard lands.

¹(2) During the period any land, of which possession is taken under section 6A, or retaken under sub-section (3) of section 9B, remains in the possession of an authorised person, no person shall without the permission of the authorised person use or occupy such land or take fruits from trees on, or other produce from, such land.

Rights to
use the
water of
the tank.

²16. During the period of possession all rights to use the water of the tank for irrigation purposes shall vest in the authorised person and no person shall use the water of the tank for such purposes except with the permission of the authorised person or in so far as he may be permitted to do so by or under the provisions of this Act.

Maximum
irrigation
area.

³16A. (1) When the possession of any tank has been taken under section 5 or section 6, the Collector shall determine in the prescribed manner the maximum area of land to the limits of which irrigation from the said tank may practicably be extended (hereinafter referred to as the maximum irrigation area) and the system and alignment by which and the priority in accordance with which such irrigation can be so extended to the land in that area, and shall publish a notice in the prescribed form and manner defining the limits of the maximum irrigation area and specifying the system, alignment and priority so determined.

(2) Every person possessing agricultural land within the maximum irrigation area shall, subject to the provisions of sub-sections (3) and (4), be liable to pay a fee annually during the period of possession to the authorised person at the rate fixed and in the manner provided under section 17 and such liability shall not cease by reason of such person not using water for irrigation purposes from the tank to which the maximum irrigation area relates.

(3) Any person concerned may, within thirty days of the date of the publishing of the notice referred to in sub-section (1), apply in the prescribed form and manner and on payment of the prescribed fee to the Collector for—

(a) including any land within the maximum irrigation area;

¹The original section 15 was renumbered as sub-section (1) of that section and to the said section, as so renumbered, new sub-section (2) was added by section 16 of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

²New sections 16, 16A, 16B, 17 and 17A were substituted for the original sections 16 and 17 by section 17, *ibid.*

of 1939.]

(Section 16B.)

(b) excluding any land from the maximum irrigation area, and

(c) exempting any land or part of any land from liability to pay the fees referred to in sub-section (2) on the ground that such land cannot practicably be irrigated from the tank to which the maximum irrigation area relates, or cannot be benefited by such irrigation or that such land is not agricultural land,

and the Collector after giving the applicant a reasonable opportunity of being heard may pass such order as to such inclusion, exclusion or exemption as he thinks fit.

(4) The Collector may, of his own motion at any time after the expiry of thirty days from the date of publishing of the notice referred to in sub-section (1), include within the maximum irrigation area any land which was not agricultural land at the time of publication of such notice but has subsequently been converted into agricultural land, or otherwise revise the limits of the maximum irrigation area or exempt any land or part of any land within such maximum irrigation area from liability to pay the fees referred to in sub-section (2) and the Collector shall modify the list referred to in sub-section (1) of section 16B accordingly :

Provided that before any order for such inclusion, revision or exemption is passed all persons concerned shall, by notice served or published in the prescribed manner, be given a reasonable opportunity of making any representation which they may like to make and the Collector shall consider such representation.

¹16B. (1) As soon as may be after the Collector has disposed of any applications made under sub-section (3) of section 16A, he shall prepare a list in the prescribed form and manner of the persons who are liable to pay the fee referred to in sub-section (2) of that section and such list shall specify the amount of agricultural land within the maximum irrigation area in respect of which each such person is to pay such fee and the amount of such fee which such person is to pay annually to the authorised person.

Preparation of list.

(2) The Collector shall publish the list referred to in sub-section (1) and every modification of such list in the manner prescribed and shall, where the authorised person is not the Collector, forward a copy of such list and every modification of such list to the authorised person who shall permit every person whose name is entered in the list or his successor in interest to use the water of the tank for the irrigation of the land of such person as long as the amount of the fee payable by such person is duly paid and not otherwise.

(3) If any dispute arises between persons entered in the list prepared under sub-section (1) as to any matter in respect of the use of water by such persons from the tank for the irrigation of

¹See footnote 2 on page 106, ante.

(Sections 17, 17A.)

their lands the authorised person or a person authorised in this behalf by the Collector shall decide the dispute and his decision, subject to the provisions of section 26, shall be final.

Payment
and rate
of fees.

17. (1) Every person whose name is included in the list referred to in sub-section (1) of section 16B or his successor in interest shall pay annually and in the prescribed manner and on the dates prescribed to the authorised person or to such person as may be authorised by the Collector in this behalf the fees fixed according to the provisions of this section.

(2) If the fees payable under sub-section (1) are not paid within thirty days from the due date fixed for such payment, interest on the amount of the fees so outstanding shall be payable at the rate of six and one quarter *per centum per annum* calculated from the day on which such payment became due until the date on which the amount of the fees so outstanding is paid or recovered, as the case may be.

(3) The Collector shall fix, in respect of any tank of which possession is taken under this Act and for which the maximum irrigation area has been determined by the Collector, the rate or rates at which fees to be paid to the authorised person under sub-section (1) shall be calculated and different rates may be so fixed for classes of agricultural lands of different descriptions or having different advantages or for lands for the irrigation of which any person had at the time when possession was taken of the tank under this Act the prescriptive right to use water for irrigation.

(4) The rate to be fixed under sub-section (3) shall be such that all costs incurred or likely to be incurred—

(i) by the authorised person in carrying out the required improvements in the tank; and

(ii) by the Collector in carrying out the purposes of this Act in respect of the tank;

may be recovered together with interest thereon at a rate, fixed by the [State] Government, not exceeding six and one quarter *per centum per annum* and together with an amount estimated by the Collector as is likely to be necessary for maintaining the tank in proper condition during the period of possession determined by the Collector under section 8.

(5) The Collector may revise the rate or rates of fees fixed under this section in respect of any tank.

(6) Any sum due to the authorised person under this section shall be recoverable as a public demand.

Passage of
water.

17A. No person shall obstruct the passage of any water taken for irrigation purposes from any tank in accordance with the system, alignment and priority for taking water as determined by the Collector under sub-section (1) of section 16A.

¹See footnote 2 on page 106, *ante*.

²See footnote 2 on page 96, *ante*.

of 1885.]

(Sections 18—19A.)

18. ¹(1) During the period of possession the authorised person may, subject to the provisions of this Act and the previous permission of the Collector, lease to any person for a period not extending beyond the period of possession any part of the banks of the tank or any right to take fruit from trees on, or other produce from, such banks or any right to rear and catch fish in the tank.

Power of authorised persons to lease out the tank, etc.

¹(2) During the period any land of which possession is taken under section 6A or retaken under sub-section (3) of section 9B remains in the possession of an authorised person, such authorised person may, subject to the provisions of this Act and the previous permission of the Collector, lease to any person for a period not extending beyond the said period of possession any part of the said land or any right to take fruits from trees on, or other produce from, such land.

¹(3) Any sum due to the authorised person under any lease granted under this section shall be recoverable as a public demand.

¹(4) All sums realised or estimated to be realised by the Collector or by the authorised person under any lease granted under this section and any other income derived from the tank including banks thereof and from adjoining lands taken possession of under section 6A and by the sale of silt or otherwise, shall be applied in payment of the costs recoverable under sub-section (4) of section 17.

19. Except as provided in this Act, no transfer by sale, gift, will, mortgage, lease or any contract or agreement of any right acquired by an authorised person under the provisions of this Act in respect of a derelict tank, ²[or in respect of any land of which possession is taken under section 6A or retaken under sub-section (3) of section 9B] shall be valid.

Bar to transfer of tank except as provided in this Act.

VIII of 1885.

³19A. Notwithstanding anything contained in the Bengal Tenancy Act, 1885, no person shall acquire any occupancy right, in any part of the banks of, or in any land adjoining, a tank leased out to such person under section 18 and no person who has held any part of the banks of any tank under a lease under section 18 at any time since the commencement of this Act shall be deemed to have acquired any occupancy right therein.

Bar to acquisition of occupancy rights in lands leased out under section 18.

¹The original section 18 was renumbered as sub-section (1) of that section and to the said section, as so renumbered new sub-sections (2), (3) and (4) were added by section 18 of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

²The words, figures, letters and brackets within square brackets were inserted by section 19, *ibid.*

³This new section was inserted by section 20, *ibid.*

(Sections 20—22.)

* Application of the Act to tank improved as a relief measure.

20. (1) When any tank has been re-excavated at the expense of the ²[State] Government as a relief measure by the system commonly known as Test or Famine Relief, the Collector may, after giving an opportunity to the person having control over the tank to be heard in the matter, direct that possession of such tank should be taken over by the Collector.

(2) When possession of any improved tank is taken over under sub-section (1) such tank shall be deemed for the purposes of this Act to be a tank taken over and improved under the provisions of this Act and the provisions of this Act shall thereupon apply *mutatis mutandis* to such tank accordingly.

Restoration of possession of tank.

21. (1) When the possession of a derelict tank is terminated in accordance with the provisions of section 8, the tank shall be restored to the possession of the persons who were recorded as entitled to possession thereof in the record-of-rights referred to in section 22, or their successors in interest and any land possession of which was taken under section 6A but has not been previously restored under section 9B or section 9C or possession of which has been retaken under sub-section (3) of section 9B shall be restored to the possession of the persons who are recorded as entitled to possession thereof in the record-of-rights referred to in section 22 or their successors in interest.

(2) When possession of any tank or land is restored under sub-section (1) or under section 9, all rights in the tank including all rights to use the water for the purposes of irrigation which existed prior to the time when possession was first taken of the tank under section 5 or section 6 and all rights in such land which existed prior to the time when possession of the land was taken under section 6A or retaken under sub-section (3) of section 9B, as the case may be, excepting any rights for which compensation has been paid under section 14, shall be revived.

Record-of-rights in respect of derelict tanks.

22. (1) The Collector shall prepare in the prescribed form and manner a record-of-rights in respect of all tanks which are declared to be derelict tanks under this Act, ⁴[and a record-of-rights in respect of the lands adjoining such tanks of which possession is taken under section 6A or retaken under sub-section (3) of section 9B] and during the period of possession of any such tank ⁵[or during the period for which any such land remains in

¹This new section was substituted for the original section by section 21 of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act, XXIV of 1948).

²See footnote 2, on page 96, *ante*.

³This new section was substituted for the original section by section 22 of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

⁴The words, figures, letters and brackets within square brackets were inserted by section 23(a), *ibid*.

⁵These words within square brackets were inserted by section 23(b), *ibid*.

[1939.]

(Section 23.)

the possession of an authorised person] he may, on application or of his own motion, from time to time, add to or alter in the prescribed manner any entry in the record-of-rights ¹[in respect of such tank or such land].

²(1a) In the record-of-rights prepared under sub-section (1), there shall be shown in addition to any other details that may be prescribed, the following:—

- (a) the names of all persons from the actual possessor upwards up to and including the owner having permanent transferable right in the tank and adjoining lands together with their addresses, nature and extent of right and interest in the tank and adjoining lands as existing immediately before possession of such tank or land is taken under the provisions of this Act ;
- (b) the revenue or rent and cesses, if any, payable by the different persons referred to in clause (a) in respect of the tank or land or if that be not ascertainable then the revenue or rent and cesses in respect of the estate, tenure, or holding in which such tank or land is included ; and
- (c) the numbers of cadastral survey plots together with the names and addresses of possessors of such plots who may have immediately before possession of such tank is taken the prescriptive right of taking water from such tank for irrigation purposes.

(2) Every entry in the record-of-rights referred to in sub-section (1) shall be evidence of the matter referred to in such entry, and shall be presumed to be correct in every particular for the purposes of this Act until it is proved by evidence to be incorrect.

³23. (1) The ⁴[State] Government may, by order published in the *Official Gazette*, direct that any tank which may have been improved under the provisions of this Act prior to the commencement of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948, shall, with effect from a date to be specified in such order, be deemed to have been improved in accordance with the provisions of this Act as amended by the last mentioned Act.

Applica-
tion of
the Act
to certain
tanks.

West Ben.
Act XXIV
of 1948.

(2) When an order under sub-section (1) is made in respect of any tank, the Collector shall, in the prescribed manner, prepare or revise the list of maximum irrigation area, revise the order

¹These words within square brackets were added by section 23(c) of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

²This new sub-section was inserted by section 23(d), *ibid*.

³This new section was substituted for the original section by section 24, of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

⁴See footnote 2 on p. 96, *ante*.

(Sections 24—27.)

regarding period of possession and assessment of fees and take such other action as may be deemed necessary to give effect to such order.

Costs.

¹24. All costs incurred by the Collector in carrying out the purposes of this Act in respect of a tank of which possession is taken under section 6 or in respect of any land of which possession is taken under section 6A or retaken under sub-section (3) of section 9B shall be paid by the authorised person at such times and in such manner as may be prescribed, and on default in payment thereof the same shall be recoverable by the Collector as a public demand.

Decision of disputes.

25. ²(1) During the period of possession all disputes relating to the exercise of any rights in respect of a tank or the use of the water thereof by the authorised person ^{2*} * * * shall be decided by the Collector in such manner as may be prescribed.

³(2) During the period any land of which possession is taken under section 6A or retaken under sub-section (3) of section 9B remains in the possession of an authorised person, all disputes relating to the exercise of any rights in respect of such land shall be decided by the Collector in such manner as may be prescribed.

Appeal against action of authorised person.

26. Any person aggrieved by any action ⁴[or decision] of an authorised person, other than the Collector, ⁵[or any person authorised by the Collector] may appeal to the Collector who after giving such authorised person an opportunity to be heard in the matter shall pass such order thereon as he thinks fit.

Other appeals.

27. (1) Any person aggrieved by any order passed by a Collector, other than the Collector of the district, under this Act may appeal in the prescribed manner to the Collector of the district.

(2) Any person aggrieved by any order passed, on appeal or otherwise, by the Collector of the district may appeal in the prescribed manner to the Commissioner.

¹This new section was substituted for the original section by section 25 of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

²The original section 25 was renumbered as sub-section (1) of that section, and in the said section, as so renumbered, the words, figures and brackets, "or among any other persons referred to in sub-section (2) of section 16" were also omitted by section 26(a), *ibid.*

³This new sub-section was added by section 26(b), *ibid.*

⁴The words within square brackets were inserted by section 27(d), *ibid.*

⁵The words within square brackets were inserted by section 27(b), *ibid.*

of 1939.]

(Sections 28—31.)

(3) Any person aggrieved by any order passed by a Commissioner under this Act may appeal in the prescribed manner to the Board of Revenue :

Provided that where an order passed by the Collector of the district on appeal has been confirmed by the Commissioner no appeal under this sub-section shall lie except on a point of law.

28. Notwithstanding anything contained in any other Act the procedure to be followed by the Collector of the district Commissioner or Board of Revenue in any proceedings under section 27 shall be in accordance with rules made under this Act.

Procedure in proceedings under section 27.

29. No decree ¹[or order] of a Civil Court shall operate to disturb, curtail or otherwise modify the possession under this Act of a tank ²[or of any land adjoining such tank] by the authorised person, or, during the period of possession ³[of such tank or during the period for which any such land remains in the possession of an authorised person] to annul or alter any order or decision of the Collector or any other Revenue authority made or purporting to have been made under the provisions of this Act.

Order of Civil Court not to operate during ~~the~~ period of possession.

30. ⁴(1) No suit shall lie in any Civil Court for compensation in respect of any injury, damage or loss resulting from anything done under this Act.

Bar to jurisdiction of Civil Courts.

⁴(2) No suit or other proceedings shall lie against the Collector, other authorised person or any officer or worker employed by or under the Collector for anything in good faith done or intended to be done or purporting to be done under the provisions of this Act or any rule made thereunder.

31. The Collector, subject to any rules made under this Act, may at any time enter upon any land with such officers or servants as he considers necessary, and make a survey or take measurements thereof or do any other acts which he considers to be necessary for carrying out any of his duties under this Act.

Power to enter land to make survey, etc.

¹The words within square brackets were substituted for the words "nor order" by section 2 and the First Schedule to the West Bengal Repealing and Amending Act, 1949 (West Ben. Act XIX of 1949).

²The words within square brackets were inserted by section 28(a) of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

³The words within square brackets were inserted by section 28(b), *ibid*.

⁴The original section 30 was renumbered as sub-section (1) of that section and after the said section, as so renumbered, new sub-section (2) was added by section 29, *ibid*

of 1939.]

(Section 37.)

37. (1) The ¹[State] Government may make rules for carrying out the purposes of this Act.

Power² to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the forms of notices under section 3, sub-section (1) of section 4 and sub-section (1) of section 23, of ³[orders under sub-section (1) of section 6, sub-section (1) of section 6A and sub-section (3) of section 9B], and of record-of-rights under sub-section (1) of section 22 ;
- (b) the manner of serving notice under section 3, ⁴[sub-section (1) of section 4] and sub-section (1) of section 23 and of publishing notice under sub-section (1) of section 4 ;
- (c) the particulars and conditions to be specified in an order under sub-section (1) of section 6 ;
- ⁴(cc) the manner of making an application under clause (b) of sub-section (1) of section 6A and of giving reasonable opportunity to the person in possession of the land to make any representation under the proviso to the said sub-section ;
- (d) the time and manner of payment of compensation, under section 12, section 13, ⁵[sub-section (2) of section 14 and sub-sections (1) and (2) of section 14A], and of costs under section 24 ;
- ⁶(dd) the manner of determining the maximum irrigation area and the system, alignment and priority of irrigation in that area, and the form and the manner of publishing the notice defining the limits of the maximum irrigation area and the system, alignment and priority of irrigation in that area, under sub-section (1) of section 16A and the form and manner of the application and the fee payable under sub-section (3) of that section ;
- ⁶(ddd) the manner of service and publication of notice referred to in the proviso to sub-section (4) of section 16A ;

¹See footnote 2 on page 96, *ante*.

²The words, figures, letters and brackets within square brackets were substituted for the words, figures and brackets "order under sub-section (1) of section 6" by section 34(1) of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

³The words, figures and brackets within square brackets were inserted by section 34(2), *ibid*.

⁴This new clause was inserted by section 34(3), *ibid*.

⁵The words, figures, letter and brackets within square brackets were substituted for the words, figures and brackets "and sub-section (2) of section of 14" by section 34(4), *ibid*.

⁶New clauses (dd), (ddd), (dddd) and (ddddd) were inserted by section 5, *ibid*.

(Section 37.)

- ¹(*dddd*) the form of the list and the manner of its preparation under sub-section (1) of section 16B and the manner of publication of the list and every modification thereof under sub-section (2) of that section ;
- ¹(*dddddd*) the manner and the dates of payment of fees under sub-section (1) of section 17;
- (*e*) the manner of preparing the ²[records-of-rights] under sub-section (1) of section 22, and of adding or altering any entry therein ;
- ²(*ee*) the manner of preparation and revision of the list of maximum irrigation area referred to in sub-section (2) of section 23 ;
- (*f*) the manner of deciding disputes under ⁴[sub-sections (1) and (2) of section 25] ;
- (*g*) the manner of making an appeal and the procedure to be followed in any proceedings under section 27;
- (*h*) the procedure and conduct of the Collector and of officer and servants referred to in section 31;
- (*i*) the exercise of powers under sub-section (1) of section 32 to enforce the making and delivery of statements and production of documents.

¹See footnote 6 on page 115, *ante*.

²The word within square brackets was substituted for the word "record-of-rights" by section 34(6) of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

³This new clause was inserted by section 34(7), *ibid*.

⁴The words, figures and brackets within square brackets were substituted for the word and figures "section 25" by section 34(8), *ibid*.

Bengal Act VII of 1940¹

THE INLAND STEAM-VESSLS (BENGAL AMENDMENT) ACT, 1940.

ADAPTED ... { The Indian Independence (Adaptation of
Bengal and Punjab Acts) Order, 1948.
The Adaptation of Laws Order, 1950.

[25th April, 1940.]

An Act to amend the Inland Steam-vessels Act, 1917, in its application to Bengal.

1 of 1917. WHEREAS it is expedient to amend the Inland Steam-vessels Act, 1917, in its application to Bengal in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Inland Steam-vessels (Bengal Amendment) Act, 1940. Short title and

(2) It shall come into force on such ²date as the ³[State] Government may, by notification in the *Official Gazette*, appoint. ment.

2. The Inland Steam-vessels Act, 1917, shall, in its application to ⁴[West Bengal], be amended in the manner hereinafter provided. Applica-
tion of Act.

3. After section 44 of the Inland Steam-vessels Act, 1917, the following section shall be inserted, namely :— Insertion
of new sec-
tion 44A in
Act I of
1917.

“44A. A Court making an investigation under this chapter may make such order as it thinks fit respecting the costs of the investigation or any part thereof and any money payable as costs by virtue of an order made under this section shall be recoverable under the provisions of the Code of Criminal Procedure, 1898, as if it were a fine.”

Act V of
1898.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 31st August, 1939, pt. IVB, page 24 ; for Proceedings of the Council, see the Proceedings of the meetings of the Bengal Legislative Council, held on the 23rd November and 11th December, 1939; for Proceedings of the Assembly, see the Proceedings of the meeting of the Bengal Legislative Assembly, held on the 12th March, 1940.

²The Act came into force on the 1st July, 1940. *Vide* notification No. 548Mne, dated the 11th June, 1940, published in the *Calcutta Gazette*, dated the 13th June, 1940, Pt I, page 1707.

³The word within square brackets was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴The words within square brackets were substituted for the word “Bengal” paragraph (2) of Article 3 of the Indian Independence (Adaptation and Punjab Acts) Order, 1948.

Bengal Act X of 1940

THE BENGAL MONEY-LENDERS ACT, 1940.

CONTENTS.

Preamble.

CHAPTER I.

INTRODUCTORY.

SECTION.

1. Short title, extent and commencement.
2. Definitions.
3. Notified bank.

CHAPTER II.

COMPETENT COURTS AND PROCEDURE.

4. Competent Courts under this Act.
5. Procedure in Competent Courts.

CHAPTER III.

REGISTRATION AND LICENSING OF MONEY-LENDERS.

6. Appointment of State and other Registrars.
7. Register of money-lenders.
8. Money-lending business not to be carried on except under licence.
9. Licences.
10. Licence fee.
11. Application for licences.
12. Entry in register and grant of licences.
13. Stay of suit when money-lender does not hold licence.
14. Disqualification of persons for holding a license.
15. Proof of conviction or order for disqualification.
16. Refusal to grant licence.
17. Cancellation of licence by a Sub-Registrar.
18. Power to Registrar and Sub-Registrar to examine any person on oath.
19. Application for cancellation of licence.
20. Court's power to cancel a licence.
21. No compensation for cancellation of licence.
22. Licence fees and penalties recoverable as public demands.
23. Offences in respect of licences.

CHAPTER IV.

REGULATION OF ACCOUNTS OF MONEY-LENDERS.

SECTION.

- 24. Duty of money-lender to keep accounts.
- 25. Money-lenders to furnish statements of accounts.
- 26. Borrower not bound by money-lender's statement of accounts.
- 27. Procedure in suits relating to loans by money-lenders.

CHAPTER V.

ASSIGNMENT OF LOANS.

- 28. Notice and information to be given on assignment of loans by lenders.
- 29. Application of Act as respects assignees.

CHAPTER VI.

INTEREST AND OTHER CHARGES.

- 30. Limitations as to the amount and rate of interest recoverable.
- 31. Prohibition of interest on decretal amount.
- 32. Computation of interest on loans in kind.
- 33. Prohibition of charges for expenses on loans.

CHAPTER VII.

MISCELLANEOUS.

- 34. Power of Court to direct payment by instalments.
- 35. Sale of property in execution of decrees in respect of loans.
- 36. Re-opening of transactions.
- 37. Prohibition of execution of decrees by arrest and detention in prison.
- 38. Inquiry for taking accounts and declaring the amount due.
- 39. Deposit in Court of money due to lender.
- 40. Entry of an amount in a bond, etc., different to the amount actually lent to be an offence.
- 41. Penalty for molestation.
- 42. General provisions regarding penalties.
- 43. Protection to persons acting under this Act.
- 44. Power to make rules.
- 45. Bengal Act VII of 1933 not to apply to loans to which this Act applies.

Bengal Act X of 1940¹

THE BENGAL MONEY-LENDERS ACT, 1940.

AMENDED	...	{ West Ben. Act VII of 1948. West Ben. Act V of 1949. West Ben. Act XHI of 1950.
ADAPTED	...	{ The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. The Adaptation of Laws Order, 1950.

[1st August, 1940.]

An Act further to regulate transactions of money-lending in Bengal.

WHEREAS it is expedient to make further and better provision for the control of money-lenders and for the regulation and control of money-lending:

It is hereby enacted as follows :—

CHAPTER I.

INTRODUCTORY.

1. (1) This Act may be called the Bengal Money-lenders Act, 1940. Short title,
extent and
commence-
ment.

(2) It extends to the whole of ²[West Bengal] ³[but it shall not apply to the Reserve Bank of India constituted by the Reserve Bank of India Act, 1934.]

II of 1934.

(3) It shall come into force on such date⁴ as the ⁵[State] Government may, by notification in the *Official Gazette*, appoint.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 18th July, 1938, p 217; the Report of the Select Committee was presented to the Assembly on the 16th February, 1939; for Proceedings of the Assembly, see the Proceedings of the meetings of the Bengal Legislative Assembly, held on the 5th August, 1938, 16th February, 3rd and 4th April, 11th, 17th, 18th, 19th, 22nd, 23rd, 24th, 25th, 26th, 29th and 30th May, 1st, 2nd, 14th, 15th, 16th, 20th, 21st, 22nd, 23rd, 26th and 27th June, 1939; for Proceedings of the Council, see the Proceedings of the meetings of the Bengal Legislative Council, held on the 28th June, 23rd, 27th and 28th November, 6th, 11th, 15th and 21st December, 1939, and 3rd, 4th, 8th, 9th, 10th, 11th, 15th, 16th, 17th, 18th and 19th January, 1940.

²The words within square brackets were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³The words and figures within square brackets were added by s. 2 of the West Bengal Money-lenders (Amendment) Act, 1949 (West Ben. Act V of 1949).

These words and figures were deemed always to have been added, see s. 2 of West Ben. Act V of 1949.

⁴The Act came into force on the 1st day of September, 1940, vide notification No. 2674J, dated the 3rd August, 1940, published in the *Calcutta Gazette, Extraordinary*, dated the 3rd August, 1940.

⁵This word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Chapter 1.—Introductory.—Section 2.)

2. In this Act, unless there is anything repugnant in the subject or context,—

- (1) “bank” means a banking company as defined in section 277F of the Indian Companies Act, 1913,¹ whether incorporated in or outside ^{VII of 1913.} [India];
- (2) “borrower” means a person to whom a loan is advanced and includes a successor-in-interest or surety;
- (3) “Calcutta” means the area within the limits of the ordinary original civil jurisdiction of the High Court in Calcutta;
- (4) “commercial loan” means a loan advanced to any person to be used by such person solely for the purposes of any business or concern relating to trade, commerce, industry, mining, planting, insurance, transport, banking or entertainment, or to the occupation of wharfinger, warehouseman or contractor or any other venture of a mercantile nature, whether as proprietor or principal or agent or guarantor;

Explanation.—Notwithstanding anything contained in any agreement relating thereto, a loan shall not be deemed to be a commercial loan unless it is in substance a loan to be used solely for any of the purposes referred to in this clause.

- (5) “co-operative life insurance society”, “mutual insurance company” and “provident society” have the same meanings as in the Insurance Act, 1938; IV of 1938
- (6) “co-operative society” means a society registered under the Co-operative Societies Act, 1912, or any ^{II of 1912.} [Provincial Act or Act of the State Legislature], for the time being in force, relating to such societies;
- (7) “insurance company” means—
 - (a) in relation to any loan advanced before the commencement of the Insurance Act, 1938, an insurance company within the meaning of the Indian Insurance Companies Act, 1928,² and XX of 1928.
 - (b) in relation to any loan advanced after the commencement of the Insurance Act, 1938, an insurance company within the meaning of that Act;

¹The Indian Companies Act, 1913 (VII of 1913) was repealed and re-enacted by the Companies Act, 1956 (I of 1956).

²The word within square brackets was substituted for the words “British India” by paragraph (1) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³The words within square brackets were substituted for the words “Act of the Provincial Legislature” by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

⁴The Indian Insurance Companies Act, 1928 (XX of 1928) was repealed and re-enacted by the Insurance Act, 1938 (IV of 1938).

of 1940.]

(Chapter I.—Introductory.—Section 2.)

- (8) "interest" includes any sum by whatsoever name called, in excess of the principal paid or payable to a lender in consideration of, or otherwise in respect of, a loan whether the same is charged or sought to be recovered specifically by way of interest or otherwise, but does not include any sum lawfully charged by a lender in accordance with the provisions of this Act or any other law for the time being in force for or on account of costs, charges or expenses ;
- (9) "lender" means a person who advances a loan and includes a money-lender ;
- (10) "licence" means a licence granted under this Act ;
- (11) "life assurance company" has the same meaning as in the Indian Life Assurance Companies Act, 1912 ;¹
- (12) "loan" means an advance, whether of money or in kind, made on condition of repayment with interest and includes any transaction which is in substance a loan but does not include—
- (a) a deposit of money or other property,
- (b) a loan to, or by, or a deposit with, any society or association registered under the Societies Registration Act, 1860, or under any other law relating to public, religious or charitable objects ;
- (c) a loan taken or advanced by ²[by³ the Central Government or any State Government] or by any local authority in ⁴[West Bengal] ;
- (d) a loan advanced before or after the commencement of this Act—
- (i) by a bank ⁵[which is a scheduled bank] or by a bank which has been declared to be a notified bank under section 3, whether or not such bank was a scheduled bank or was so declared to be a notified bank, as the case may be, at the time the loan was advanced ; or

VI of 1912.

XXI of
1860.

¹The Indian Life Assurance Companies Act, 1912 (VI of 1912) was repealed and re-enacted by the Insurance Act, 1938 (IV of 1938).

²The words "by the Central Government or any Provincial Government" were originally substituted for the words "any Government in British India" by paragraph (1) of Article 3 and the Schedule to the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³Sic this word "by" has been inserted by clerical error.

⁴See footnote 2 on p. 121, *ante*.

⁵The words within square brackets were substituted for the words and figures "which was a scheduled bank on the first day of January, 1959" by s. 2 of the West Bengal Money-lenders (Amendment) Act, 1950 (West Ben. Act XIII of 1950).

(Chapter 1.—Introductory.—Section 2.)

- (ii) by a co-operative life insurance society, co-operative society, insurance company, life assurance company, mutual insurance company, provident insurance society or provident society or from a provident fund ;
- (e) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, **XXVI of 1881.**
- (f) a commercial loan ;
- (g) a loan advanced to any person for the purchase or construction of a house or for the construction of a house together with the purchase of the site thereof, within the limits of the area defined by clause (11) of section 3 of the Calcutta Municipal Act, 1923, ¹or **Ben. Act III of 1923.** of any area which has been or may hereafter be constituted a municipality under the provisions of the Bengal Municipal Act, 1932, if such loan is subject to the condition of repayment by instalments extending over a period of ten years or more ; **Ben. Act XV of 1932.**
- (h) a loan made to or by the Administrator-General and Official Trustee of ²[West Bengal] or the Commissioner of Wakfs or the Official Assignee or the Official Receiver of the High Court in Calcutta ;
- (i) a loan or debenture in respect of which dealings are listed on any Stock Exchange ;
- (13) "money-lender" means a person who carries on the business of money-lending in ³[West Bengal] or who has a place of such business in ⁴[West Bengal], and includes a pawnee as defined in section 172 of the Indian Contract Act, 1872 ; **IX of 1872.**
- (14) "money-lending business" and "business of money-lending" mean the business of advancing loans either solely or in conjunction with any other business ;
- (15) "prescribed" means prescribed by rules made under this Act ;
- (16) "principal" means in relation to a loan the amount actually advanced to the borrower ;
- (17) "provident fund" has the same meaning as in the Provident Funds Act, 1925 ; **XIX of 1925.**
- (18) "provident insurance society" means a society registered under the ⁵Provident Insurance Societies Act, 1912 ; **V of 1912.**
- (19) "register" means a register of money-lenders maintained under section 7 ;

¹The Calcutta Municipal Act, 1923 (Ben. Act III of 1923) was repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951).

²See footnote 2 on page 121, ante.

³The Provident Insurance Societies Act, 1912 was repealed and re-enacted by the Insurance Act, 1938 (IV of 1938).

of 1940.]

(Chapter I.—Introductory.—Chapter II.—Competent Courts and Procedure.—Sections 3, 4.)

II of 1934.

(20) "scheduled bank" has the same meaning as in the Reserve Bank of India Act, 1934 ;

(21) "suit" includes an appeal ;

(22) "suit to which this Act applies" means any suit or proceeding instituted or filed on or after the 1st day of January, 1939, or pending on that date and includes a proceeding in execution—

(a) for the recovery of a loan advanced before or after the commencement of this Act ;

(b) for the enforcement of any agreement entered into before or after the commencement of this Act, whether by way of settlement of account or otherwise, or of any security so taken, in respect of any loan advanced whether before or after the commencement of this Act ; or

(c) for the redemption of any security given before or after the commencement of this Act in respect of any loan advanced whether before or after the commencement of this Act.

3.* The ¹[State] Government may, by notification in the *Official Gazette*, declare any bank to be a notified bank for the purposes of this Act :

Provided that no bank shall be so declared to be a notified bank unless it complies with such conditions as may, with the approval of the ¹[State] Legislature, be prescribed.

CHAPTER II.

Competent Courts and Procedure.

4. Notwithstanding anything contained in any other law, the Courts (hereinafter referred to as Competent Courts) which have jurisdiction to entertain proceedings under sections 16 and 19 and to pass orders therein are the Courts hereinafter specified, within the local limits of whose jurisdiction the money-lender actually and voluntarily resides or carries on the business of money-lending—

Competent Courts under this Act.

(a) in Calcutta, the Court of Small Causes of Calcutta ;

(b) outside Calcutta, the Court of the District Judge (hereinafter called a "District Court") and any Court to which he may transfer the proceedings.

¹See footnote 5 on p. 121, ante.

(Chapter II.—Competent Courts and Procedure.—Chapter III.—
Registration and Licensing of Money-lenders.—Sections 5—8.)

Procedure
of Com-
petent
Courts.

5. (1) Subject to the provisions of this Act, a Competent Court shall, in proceedings under section 19, have the same powers and shall follow the same procedure as it has and follows in civil suits, and the provisions of section 24 of the Code of Civil Procedure, 1908, shall apply to such proceedings.

Act V of
1908.

(2) Every order made by a Competent Court under this Act shall be subject to appeal in accordance with the provisions of the Code of Civil Procedure, 1908, applicable to appeals.

(3) An appeal from a decision made by the Court of Small Causes of Calcutta under this Act shall lie to the High Court as if it were an appeal under sub-section (2) to the High Court from a decision made by a District Court.

CHAPTER III.

Registration and Licensing of Money-lenders.

Appoint-
ment of
State and
other
Registrars.

6. There shall be a ¹[State] Registrar for the purposes of this Act and as many Registrars and Sub-Registrars of money-lenders for assisting the Registrar as the ¹[State] Government may from time to time determine. The ¹[State] Government may define, by notification in the *Official Gazette*, the area within which each such officer shall exercise his powers and perform his duties and may prescribe the control which shall be exercised by the ¹[State] Registrar over Registrars and Sub-Registrars and by a Registrar over Sub-Registrars :

Provided that no person who is not a servant of the ²[Govern-
ment] ³* * shall be empowered to act as a ¹[State] Registrar, Registrar or Sub-Registrar under this Act.

Register of
money-
lenders.

7. Each Sub-Registrar shall maintain in the prescribed form a register of money-lenders holding licences issued by him.

Money-
lending
business
not to be
carried on
except
under
licence.

8. After such date not less than six months after the commencement of this Act as the ¹[State] Government shall, by notification in the *Official Gazette*, appoint in this behalf, no money-lender shall carry on the business of money-lending unless he holds an effective licence.

Explanation.—An effective licence for the purposes of this Act comprises a licence issued to a person who is not disqualified for holding a licence.

¹See footnote 5 on p. 121, ante.

²The word within square brackets was substituted for the word "Crown" by paragraph 4(7) of the Adaptation of Laws Order, 1950.

³The words "in India" were omitted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

(Chapter III.—Registration and Licensing of Money-lenders.—Sections 9—13.)

9. (1) A licence shall be valid throughout the whole of ¹[West Bengal] ^{Licence} for a period of three years from the date of its issue or until it is cancelled.

(2) On the expiration of the period for which the licence was granted or on the cancellation of a licence it shall be returned by the money-lender to the Sub-Registrar who issued it.

10. There shall be paid to the ²[State] Government a fee of ^{Licence} fifteen rupees for a licence issued under this Act : ^{fee.}

Provided that the ³[State] Government may, by notification in the *Official Gazette*, remit any part of such fee either generally or for any particular class of money-lenders.

11. An application for the grant of a licence shall be made ^{Applica-} in the prescribed form and manner to the Sub-Registrar within ^{tion for} the local limits of whose jurisdiction the money-lender has a place ^{licences.} of money-lending business and shall contain such particulars as may be prescribed.

12. On receipt of an application under section 11 and on pay ^{Entry in} ment in the prescribed manner of the licence fee specified in section ^{register} 10, the Sub-Registrar shall, subject to the provisions of section 16, ^{and grant} enter the name of the applicant in the register and grant the appli- ^{of licence} cant a licence in such form as may be prescribed.

13. (1) No Court shall pass a decree or order in favour of a ^{Stay of} money-lender in any suit instituted by a money-lender for the ^{suit when} recovery of a loan advanced after the date notified under section ^{money-} 8, or in any suit instituted by a money-lender for the enforcement ^{lender} of an agreement entered into or security taken, or for the recovery ^{does not} of any security given, in respect of such loan, unless the Court ^{hold} is satisfied that, at the time or times when the loan or any part ^{licence.} thereof was advanced, the money-lender held an effective licence.

(2) If during the trial of a suit to which sub-section (1) applies, the Court finds that the money-lender did not hold such licence, the Court shall, before proceeding with the suit, require the money-lender to pay in the prescribed manner and within the period to be fixed by the Court such penalty as the Court thinks fit, not exceeding three times the amount of the licence fee specified in section 10.

(3) If the money-lender fails to pay the penalty within the period fixed under sub-section (2) or within such further time as the Court may allow, the Court shall dismiss the suit : if the money-lender pays the penalty within such period, the Court shall proceed with the suit.

(4) The provisions of this section shall apply to a claim for a set-off by or on behalf of a money-lender.

¹See footnote 2 on p. 121, ante.

²See footnote 5 on p. 121, ante.

(Chapter III.—Registration and Licensing of Money-lenders.—Sections 14—16.)

(5) In this section, the expression "money-lender" includes an assignee of a money-lender, if the Court is satisfied that the assignment was made for the purposes of avoiding the payment of licence fee and penalty which may be ordered to be paid under this section.

Disquali-
fication of
persons for
holding a
licence.

14. (1) A person shall be disqualified for holding a licence—

- (a) if so ordered by a Court under section 20, for the period ordered;
- (b) if he has been convicted of any offence specified in the Schedule to this Act and if such conviction has not been set aside by any Court of appeal or revision under any law for the time being in force.

(2) The ¹[State] Government may, at any time, on application in the prescribed form accompanied by the prescribed fee, remove a disqualification referred to in sub-section (1), having regard to the time which has elapsed since the order and the circumstances under which it was made or to the time which has elapsed since the conviction and to the nature of the offence.

Proof of
conviction
or order for
disquali-
fication.

15. Where it is required to be proved for the purposes of this Act that any person has been convicted of an offence specified in the Schedule to this Act or has been disqualified by an order of a Court for holding a licence, such conviction or order may be proved, in addition to any other mode provided by any law for the time being in force—

- (a) by an extract certified under the signature of the officer having the custody of the records of the Court in which such conviction was had, or such order was passed to be a copy of the sentence or order, or
- (b) in the case of a conviction, by a certificate signed by the officer in charge of the jail, in which the punishment or any part thereof was undergone, or by the production of the warrant of commitment under which the punishment was suffered,

together with, in each of such cases, evidence as to the identity of the person so convicted or in respect of whom such order was passed.

Refusal to
grant
licence.

16. (1) The grant of a licence shall not be refused except on one or more of the following grounds, namely :—

- (a) that the applicant has not complied with the provisions of this Act or of the rules made thereunder in respect of an application for the grant of a licence;

¹See footnote 5 on p. 121, ante.

of 1940.]

(Chapter III.—Registration and Licensing of Money-lenders.—Sections 17, 18.)

(b) that the applicant or any person responsible or proposed to be responsible for the management of the applicant's money-lending business is under this Act disqualified for holding a licence.

(2) A Sub-Registrar refusing a licence—

(i) under clause (a) of sub-section (1) shall record his reasons for such refusal ;

(ii) under clause (b) of sub-section (1) shall record the evidence of the disqualification.

(3) An appeal from the orders of a Sub-Registrar refusing a licence shall, if made within thirty days from the date of such order, lie to a Registrar authorised under section 6 to hear such appeal.

(4) A Registrar referred to in sub-section (3) may decide, if such appeal is allowed, as to the Sub-Registrar to whom application for a licence shall be made and his decision shall, subject to the provisions of sub-section (5), be final for all purposes, and shall be binding on such Sub-Registrar whether he be under the control of such Registrar or not.

(5) A Competent Court may, on application made within ninety days from the date of the decision of the Registrar in appeal under sub-section (3), revise such decision.

(6) The procedure to be followed by a Competent Court or by a Registrar in proceedings under this section shall be in accordance with rules prescribed under this Act.

IX of 1908. (7) The provisions of sections 4, 5 and 12 of the Indian Limitation Act, 1908, shall apply to all appeals and applications for revision made under this section, and for the purposes of the said sections a Registrar shall be deemed to be a Court.

17. Any Sub-Registrar may, after giving the money-lender to whom a licence entered in the register maintained by such Sub-Registrar was issued an opportunity of being heard, cancel the licence if it is proved that such money-lender was disqualified for holding a licence at the time when such licence was issued ; and thereupon the provisions of clause (ii) of sub-section (2) and of sub-sections (3), (4), (5), (6) and (7) of section 16 shall apply.

Cancellation of licence by a Sub-Registrar.

18. For the purposes of an inquiry under this Act relating to a disqualification for holding a licence a Registrar or a Sub-Registrar shall have and may exercise the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of enforcing the attendance of any person and examining him on oath.

Power to Registrar and Sub-Registrar to examine any person on oath.

*(Chapter III.—Registration and Licensing of Money-lenders.—
Sections 19, 20.)*

Application
for cancel-
lation of
licence.

19. Any borrower may, in respect of any money-lender from whom he has taken a loan, make an application to a Competent Court for an order under section 20 on the ground that such money-lender has committed such contravention of the provisions of this Act or the rules made thereunder as render him unfit to carry on the business of money-lending, and on receipt of such application, the said Court shall hold such inquiry as it deems necessary.

Court's
power to
cancel a
licence.

20. (1) A Competent Court on an application under section 19 or a Court trying a suit to which this Act applies or a Court passing an order of conviction upon a money-lender for an offence under this Act, if satisfied that the money-lender has committed such contravention of the provisions of this Act or of the rules made thereunder as, in its opinion, makes him unfit to carry on the business of money-lending—

- (a) shall cause the particulars of the conviction, if any, and of any order passed by the Court under this sub-section to be endorsed on the licence held by the money-lender or by any other person affected by such order; and
- (b) may declare such money-lender or any person responsible for the management of his money-lending business or both disqualified for holding a licence for such period as the Court may think fit and shall cancel and impound the licence held by the money-lender:

Provided that, except in the case of an order passed by a District Court, or by the Court of an Additional District Judge or by the Court of Small Causes of Calcutta, the period of disqualification shall not exceed one year.

(2) If a Court other than a District Court, or the Court of an Additional District Judge or the Court of Small Causes of Calcutta is of opinion that a period of disqualification exceeding one year should be imposed, it shall record its opinion and forward the proceedings to the District Court having jurisdiction in the place where such Court is held.

(3) The District Court to which such proceedings are submitted may, if it thinks fit, examine the parties and recall and examine any person who has already given evidence in the proceedings, and may call for and take any further evidence, and shall pass such order in the case as it thinks fit in accordance with the provisions of sub-section (1).

(4) Any person aggrieved by the decision of a Court under this section may appeal against such order, in the case of the Court of Small Causes of Calcutta to the High Court and in the case of any other Court to the Court to which an appeal ordinarily lies from the decision of the Court passing the order; and the Court

of 1940.]]

*(Chapter III.—Registration and Licensing of Money-lenders.—
Sections 21—23.*

which passed the order or the Court of appeal may, if it thinks fit, stay the operation of the order under this section pending the disposal of the appeal :

Provided that where the Court of appeal sets aside or varies an order passed under this section, it shall order that any endorsements made in pursuance thereof upon a licence held by a money-lender shall be erased or modified.

(5) The substance of any order passed under sub-section (1), sub-section (3) or sub-section (4) shall be sent forthwith in the prescribed form by the Court passing the order to the ¹[State] Registrar and also together with the cancelled licence to the Sub-Registrar who maintains the register in which the licence affected has been entered for entry in the said register and for such circulation of the substance of the said order to other Registrars as may be prescribed.

(6) Any licence required by a Court for endorsement under sub-section (1) shall be produced in such manner and at such time as the Court may direct by the person by whom it is held, and any person who without reasonable cause makes default herein shall be liable on conviction to a fine not exceeding fifty rupees for each day of the period during which the default continues.

(7) The powers conferred on a Court under sub-section (1) may be exercised by a Court in appeal or in revision.

21. A person whose licence has been cancelled shall not be entitled to any compensation on such account nor to the refund of any licence fee paid in respect of such licence.

No compensation for cancellation of licence.

22. All licence fees and all penalties imposed under this Act shall be recoverable as public demands.

Licence fees and penalties recoverable as public demands.

23. (1) Whoever being disqualified for holding a licence, applies for or obtains a licence during the pendency of such disqualification, without disclosing the fact thereof, shall be punishable, on conviction, with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both, and any licence so obtained shall not be deemed to be an effective licence.

Offences in respect of licences.

(2) Whoever obliterates or causes to be obliterated or attempts to obliterate an endorsement entered on a licence under this Act or abets such obliteration or attempt shall be punishable, on conviction, with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both.

¹See footnote 5 on page 121, ante.

(Chapter IV.—*Regulation of Accounts of Money-lenders.—*
tions 24, 25.)

CHAPTER IV.

Regulation of Accounts of Money-lenders.

**Duty of
money-
lender to
keep
accounts.**

24. (1) Every money-lender shall keep and maintain at least a cash book, a ledger and a receipt book in such form or forms as may be prescribed, and the same shall be written in Bengali or English in the regular course of business.

(2) Every money-lender shall—

- (a) deliver to the borrower at the time a loan is advanced a statement in Bengali or English as the borrower may desire, in such form as may be prescribed and showing such details of the conditions of the loan and such other information connected therewith as may be prescribed ;
- (b) give to the borrower a plain and complete receipt for every payment made on account of any loan at the time of such payment ;
- (c) upon repayment in full of a loan mark indelibly with words indicating full payment or cancellation every paper signed by the borrower, and discharge any mortgage, restore any pledge, return any note and cancel any assignment given by the borrower as security.

(3) Notwithstanding anything contained in the Indian Evidence Act, 1872, a copy of the account referred to in sub-section (1) shall, if certified in such manner as may be prescribed, be admissible as evidence of the contents of such account. I of 1872.

**Money-
lenders to
furnish
statements
of accounts.**

25. (1) Every money-lender shall, within two months of the commencement of each year, furnish each of his borrowers with a legible statement of accounts in Bengali or English as the borrower may desire signed by the money-lender or his agent and showing the amount outstanding against the borrower : such statement shall be in the prescribed form and shall show—

- (a) the amounts of principal and interest due to the money-lender at the commencement of the year ;
- (b) the amounts of any sums advanced to the borrower from time to time since the commencement of the year and the dates on which they were advanced ;
- (c) the amounts of any payments received from the borrower since the commencement of the year in respect of loans outstanding and the dates on which they were received ;
- (d) the amount of every sum due from the borrower remaining unpaid and the date on which each such sum became due and the amount of interest accrued due and unpaid in respect of every such sum ;

of 1940.]

*(Chapter IV.—Regulation of Accounts of Money-lenders.—
Sections 26, 27.)*

(e) the amount of every sum not yet due which remains outstanding and the date upon which each such sum will become due ; and

(f) such other particulars as may be prescribed.

(2) In respect of any particular loan, whether advanced before or after the commencement of this Act, a money-lender shall, on demand being made in writing by the borrower at any time while the loan or any portion thereof remains outstanding, supply to the borrower or to any person specified in that behalf in the demand, within thirty days from the date of receipt of the written demand by the money-lender or his duly authorised agent, a statement in Bengali or English as the borrower may desire, signed by the money-lender or his agent and showing in the prescribed form any or all of the particulars specified in sub-section (1) :

Provided that the money-lender shall not be bound to comply with such demand if he has complied with a demand made not more than six months prior to the date thereof, or if within such period of six months he has furnished the statement required by sub-section (1).

(3) A money-lender shall, on a demand in writing by the borrower, supply to the borrower or to any person specified in that behalf in the demand a copy of any document evidencing an agreement to secure repayment of a loan advanced to the borrower :

Provided that a money-lender shall not be bound to comply with such a demand if he has previously furnished the borrower with such copy, except on payment of such fee as may be prescribed.

(4) In this section the expression “year” means the year for which the accounts of the money-lender are ordinarily maintained in his own books.

26. A borrower to whom a statement of accounts has been furnished under section 25 shall not be bound to acknowledge or deny its correctness, and his failure to do so shall not, by itself, be deemed to be an admission of the correctness of the account.

Borrower
not bound
by money-
lender's
statement
of accounts.

27. Notwithstanding anything contained in any law for the time being in force, in any suit to which this Act applies—

(a) a Court shall, before deciding the claim on its merits, frame and decide the issue whether the money-lender has in respect of the claim in suit complied with the provisions of sections 24 and 25 ; and

(b) if the Court finds that the provisions of either of the said sections have not been so complied with, it may, if the plaintiff's claim is established either wholly or in part, disallow the whole or such portion of the interest found due as may, in the circumstance of

Procedure
in suits
relating to
loans by
money-
lenders.

(Chapter V.—Assignment of Loans.—Section 28.)

the case, appear reasonable to the Court, and may also disallow costs, or in computing the amount of interest due upon the loan, the Court may exclude any period for which the money-lender omitted to comply with the provisions of either of the said sections :

provided that if the money-lender has, after the time specified in the said sections, given the receipt or furnished the statement, as the case may be, and if he satisfies the Court that he had sufficient cause for not doing so earlier, the Court may include any such period in computing the interest.

Explanation.—A money-lender who has given a receipt or furnished a statement in the prescribed form shall be held to have complied with the provisions of section 24 or section 25, as the case may be, in spite of any errors and omissions in such receipt or statement, if the Court finds that such errors and omissions are neither material nor made fraudulently.

CHAPTER V.

Assignment of Loans.

Notice and information to be given on assignment of loans by lenders.

28. (1) Where any debt in respect of—

- (i) a loan advanced by a lender, whether before or after the commencement of this Act, or
- (ii) interest on any such debt, or
- (iii) the benefit of any agreement made, or security taken, in respect of any such debt or interest,

is assigned to any person, the assignor (whether he is the lender by whom the loan was advanced or any person to whom the debt has been previously assigned) shall, before the assignment is made,—

- (a) give to the assignee notice in writing that the debt, interest thereon, agreement or security is affected by the operation of this Act, and
- (b) where the debt is in respect of a loan advanced by a money-lender, supply to the assignee in such form as may be prescribed all information as to the state of the loan together with copies of documents relating thereto.

(2) Any person who acts in contravention of any of the provisions of this section shall be liable to indemnify any other person who is prejudiced by the contravention, and shall also be punishable, on conviction, with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both.

of 1940.]

(Chapter V.—Assignment of Loans.—Section 29.)

(3) In this section the expression “assigned” means assigned by an assignment *inter vivos* other than an assignment by operation of law; and the expressions “assignor” and “assignee” have corresponding meanings.

29. (1) Subject as hereinafter provided, the provisions of this Act shall continue to apply as respects any debt due to a lender or money-lender in respect of loans advanced by him after the commencement of this Act or in respect of interest on such loans or of the benefit of any agreement made or security taken in respect of any such debt or interest, notwithstanding that the debt or the benefit of the agreement or security may have been assigned to any assignee, and except where the context otherwise requires, references in this Act to a lender or money-lender shall accordingly be construed as including any such assignee as aforesaid:

Application
of Act as
respects
assignees.

Provided that, notwithstanding anything contained in this Act—

- (a) any agreement with, or security taken by, a lender or money-lender in respect of a loan advanced by him after the commencement of this Act shall be valid in favour of any *bona fide* assignee or holder for value without notice of any defect due to the operation of this Act and of any person deriving title under him; and
- (b) any payment or transfer of money or property made *bona fide* by any person, whether acting in a fiduciary capacity or otherwise on the faith of the validity of any such agreement or security, without notice of any such defect shall, in favour of that person, be as valid as it would have been if the agreement or security had been valid;

but in every such case the lender or money-lender shall be liable to indemnify the borrower or any other person who is prejudiced by virtue of this section, and nothing in this proviso shall render valid an agreement or security in favour of, or apply to proceedings instituted by, an assignee or holder for value who is himself a money-lender.

(2) The provisions of this Act shall apply and be deemed always to have applied and shall continue to apply as respects any debt due to a lender or money-lender in respect of loans advanced by him before the commencement of this Act or in respect of interest on such loans or of the benefit of any agreement made or security taken in respect of any such debt or interest, notwithstanding that the debt or the benefit of the agreement or security may have been assigned to any assignee, and except where the context otherwise requires, references in this Act to a lender or money-lender shall accordingly be construed as including any such assignee as aforesaid.

(Chapter VI.—Interest and other charges.—Sections 30, 31.)

(3) Nothing in this section shall render valid for any purpose any agreement, security or other transaction which would, apart from the provisions of this Act, have been void or unenforceable.

CHAPTER VI.

Interest and other charges.

Limitations
as to
amount
and rate of
interest
recover-
able.

30. Notwithstanding anything contained in any law for the time being in force, or in any agreement,

(1) no borrower shall be liable to pay after the commencement of this Act—

(a) any sum in respect of principal and interest which together with any amount already paid or included in any decree in respect of a loan exceeds twice the principal of the original loan,

(b) on account of interest outstanding on the date up to which such liability is computed, a sum greater than the principal outstanding on such date,

(c) interest at a rate *per annum* exceeding in the case of—

(i) unsecured loans, ten *per centum* simple,

(ii) secured loans, eight *per centum* simple,

whether such loan was advanced or such amount was paid or such decree was passed or such interest accrued before or after the commencement of this Act ;

(2) no borrower shall after the commencement of this Act, be deemed to have been liable to pay before the date of such commencement in respect of interest paid before such date or included in a decree passed before such date, interest at rates *per annum* exceeding those specified in sub-clause (c) of clause (1) ;

(3) a lender shall be entitled to institute a suit at any time after the commencement of this Act in respect of a transaction to which either or both of the preceding clauses applies or apply.

Prohibition
of interest
on decretal
amount.

31. Notwithstanding anything contained in any law for the time being in force, no Court shall, in any decree passed in any suit to which this Act applies—

(a) if the loan to which the decree relates was advanced before the commencement of this Act, allow any interest on the decretal amount, or

of 1940.]

(Chapter VI.—Interest and other charges.—Chapter VII.—Miscellaneous.—Sections 32—34.)

- (b) if the loan to which the decree relates was advanced after the commencement of this Act, allow any interest other than interest not exceeding six *per centum per annum* on the principal sum adjudged.

32. In the case of loans in kind, the money value of the commodity at the time when, and in the locality where, the loan was advanced shall, for the purposes of this Act, be deemed to be the principal of the loan, and in determining the amount which may, subject to the provisions of this chapter, be decreed in respect of any loan repayable in kind, the Court shall take into consideration the market value of the commodity in the said locality at the date or dates of repayment.

Computation of interest on loans in kind.

33. Any agreement between a lender and a borrower or intending borrower for the payment to the lender of any sum on account of costs, charges or expenses incidental or relating to the negotiations for, or the granting of, the loan or proposed loan, shall be illegal, and if any sum is paid to a lender by the borrower or intending borrower as, for or on account of any such costs, charges or expenses, that sum shall be recoverable as a debt due to the borrower or intending borrower, or in the event of the loan being completed, shall, if not so recovered, be set off against the amount actually lent and that amount shall be deemed to be reduced accordingly :

Prohibition of charges for expenses on loans.

Provided that nothing in this section shall debar a lender from recovering the costs of investigating title, of stamp duty and registration of documents and other necessary and incidental expenses in cases where the agreement includes a stipulation that property is to be given as security or by way of mortgage, or the costs of stamp duty and registration of documents in the case of unsecured loans, if both parties have agreed to such expenditure and the reimbursement thereof, nor from recovering such costs, charges or expenses as are leviable under the provisions of the Transfer of Property Act, 1882, or any other law for the time being in force.

IV of 1882.

CHAPTER VII.

Miscellaneous.

34. (1) Notwithstanding anything contained in any law for the time being in force, or in any agreement, the Court shall—

Power of Court to direct payment by instalments.

- (a) in suits in respect of loans to which the provisions of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, apply, on the application of the defendant and after hearing the plaintiff, notwithstanding the limit of six months provided therein, direct at the time of the passing of the preliminary

Act V of 1908.

(Chapter VII.—Miscellaneous.—Section 34.)

decree under rule 2 or rule 4 of the said Order to the effect mentioned in sub-clause (i) of clause (c) of sub-rule (1) of the said rule 2,—

- (i) that the payment of the amount found or declared due under sub-rule (1) of rule 2 or sub-rule (1) of rule 4 of the said Order, as the case may be, is to be made, subject to such conditions as the Court may impose in such number of annual instalments and on such dates as the Court thinks fit having regard to the circumstances of the plaintiff and the defendant and the amount of the decree; and
- (ii) that in default of payment of any such instalment the plaintiff shall, after giving to the defendant such notice as may be prescribed, be entitled to apply for a final decree under sub-clause (ii) of clause (c) of sub-rule (1) of the said rule 2 or under sub-rule (1) of the said rule 4, as the case may be, and the date of such default shall be deemed to be the date fixed under sub-clause (i) of clause (c) of sub-rule (1) of the said rule 2 for payment of the whole amount found or declared due under or by the preliminary decree :

Provided that nothing in this clause shall affect the power of the Court to allow extension of time under sub-rule (2) of rule 2 or sub-rule (2) of rule 4 of the said Order :

Provided further that if the defendant, after receiving the notice referred to in sub-clause (ii) and before a final decree is passed, makes payment into Court of the amount due from him in respect of any such instalment, the payment of such instalment shall not be deemed to be in default and the Court shall not pass a final decree ;

- (b) in suits in respect of loans advanced before the commencement of this Act other than those referred to in clause (a)—
- (i) on the application of a defendant and after hearing the plaintiff, order at the time of the passing of the decree, or
- (ii) on the application of a judgment-debtor against whom a decree in such suit has been passed whether before or after the commencement of this Act and after notice to the decree-holder, order at any time after the decree has been passed,

that the amount of the decree shall, subject to such conditions as the Court may impose, be payable without interest in such number of annual instalments, on such dates and within such period not exceeding twenty years as the Court thinks fit having regard

of 1940.

(Chapter VII.—Miscellaneous.—Sections 35, 36.)

to the circumstances of the plaintiff and the defendant or the decree-holder and the judgment-debtor and the amount of the decree, and that, if default is made in making payment of any instalment, that instalment and not the whole of the decretal amount shall be recoverable ;

- (c) during the pendency of any enquiry under sub-clause (ii) of clause (b) order, subject to such conditions as the Court may impose, the stay of execution of the decree.

(2) In default of payment of any instalment referred to in clause (b) of sub-section (1), the decree-holder shall, after giving to the judgment-debtor such notice as may be prescribed, be entitled to apply for execution of the decree in respect of such instalment together with interest thereon at the rate of not more than six *per centum per annum* from the date of such default :

Provided that nothing in this sub-section shall affect the power of the Court to allow, prior to an order for execution of the decree, an extension of time of not less than one year for the payment of any instalment, and that if such extension of time is allowed, the payment of such instalment shall not be deemed to be in default :

Provided further that if the judgment-debtor, after receiving the notice referred to in this sub-section and prior to an order for execution of the decree, makes payment into Court of the amount due from him in respect of any such instalment, the payment of such instalment shall not be deemed to be in default and the Court shall not order execution of the decree.

(3) Any order made under sub-clause (ii) of clause (b) of sub-section (1) shall be deemed to have been passed under section 47 of the Code of Civil Procedure, 1908.

Act V
of 1908.

35. Notwithstanding anything contained in any other law for the time being in force, the proclamation of the intended sale of property in execution of a decree passed in respect of a loan shall specify only so much of the property of the judgment-debtor as the Court considers to be saleable at a price sufficient to satisfy the decree, and the property so specified shall not be sold at a price which is less than the price specified in such proclamation :

Sale of property in execution of decrees in respect of loans.

Provided that, if the highest amount bid for the property so specified is less than the price so specified, the Court may sell such property for such amount, if the decree-holder consents in writing to forego so much of the amount decreed as is equal to the difference between the highest amount bid and the price so specified.

36. (1) Notwithstanding anything contained in any law for the time being in force, if in any suit to which this Act applies, or in any suit brought by a borrower for relief under this section whether heard *ex parte* or otherwise, the Court has reason to

Reopening of transactions.

Chapter VII.—Miscellaneous.—Section 36.)

believe that the exercise of one or more of the powers under this section will give relief to the borrower, it shall exercise all or any of the following powers as it may consider appropriate, namely, shall—

- (a) reopen any transaction and take an account between the parties ;
- (b) notwithstanding any agreement, purporting to close previous dealings and to create new obligations, reopen any account already taken between the parties ;
- (c) release the borrower of all liability in excess of the limits specified in clauses (1) and (2) of section 30 ;
- (d) if anything has been paid or allowed in account on or after the first day of January, 1939, in respect of the liability referred to in clause (c), order the lender to repay any sum which the Court considers to be repayable in respect of such payment or allowance in account as aforesaid :

Provided that in the case of a loan to which the provisions of sub-section (2) of section 29 apply the lender or money-lender and each of his assignees shall be liable to repay the sum which the Court considers to be repayable in respect of and in proportion to the sum received by such lender or money-lender and such assignee ;

- (e) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the lender has parted with the security, order him to indemnify the borrower in such manner and to such extent as it may deem just :

Provided that in the exercise of these powers the Court shall not—

- (i) reopen any adjustment or agreement, purporting to close previous dealings and to create new obligations, which has been entered into at a date more than twelve years prior to the date of the suit by the parties or any person through whom they claim, or
- (ii) do anything which affects any decree of a Court, other than a decree in a suit to which this Act applies which was not fully satisfied by the first day of January, 1939, or anything which affects an award made under the Bengal Agricultural Debtors Act, ¹[1936].

Ben. Act
VII of
1936.

Explanation.—A decree shall not, for the purposes of this section, be deemed to have been fully satisfied so long as there remains undisposed of an application by the decree-holder for possession of property purchased by him in execution of the decree.

¹These figures within square brackets were substituted for the figures "1935" by section 2 and the First Schedule to the West Bengal Repealing and Amending Act, 1948 (West Ben. Act VII of 1948).

of 1940.]

(Chapter VII.—Miscellaneous—Section 36.)

(2) If in exercise of the powers conferred by sub-section (1) the Court reopens a decree, the Court—

- (a) shall, after affording the parties an opportunity of being heard, pass a new decree in accordance with the provisions of this Act, and may award to the decree-holder such costs in respect of the reopened decree as it thinks fit,
- (b) shall not do anything which affects any right acquired *bona fide* by any person, other than the decree-holder, in consequence of the execution of the reopened decree,
- (c) shall order the restoration to the judgment-debtor of such property, if any, of the judgment-debtor acquired by the decree-holder in consequence of the execution of the reopened decree as may be in the possession of the decree-holder on the date on which the decree was reopened,
- (d) shall order the judgment-debtor to pay to the decree-holder, in such number of instalments as it may think fit, the whole amount of the new decree passed under clause (a), and
- (e) shall direct that, in default of the payment of any instalment ordered under clause (d), the decree-holder shall be put into possession of the property referred to in clause (c) and that the amount for which the decree-holder purchased such property in execution of the reopened decree shall be set off against so much of the amount of the new decree as remains unsatisfied.

(3) In this section the expression "suit to which this Act applies" includes a proceeding in respect of any application relating to the admission or amount of a proof of a loan advanced before or after the commencement of this Act in any insolvency proceedings.

(4) This section shall apply to any suit, whatever its form may be, if such suit is substantially one for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan or for the redemption of any such security.

(5) Nothing in this section shall affect the rights of any assignee or holder for value if the Court is satisfied that the assignment to him was *bona fide*, and that he had not received the notice referred to in clause (a) of sub-section (1) of section 28.

(6) Notwithstanding anything contained in any law for the time being in force,—

(a) the Court which, in a suit to which this Act applies passed a decree which was not fully satisfied by the first day of January, 1939, may exercise the powers conferred by sub-sections (1) and (2)—

(i) in any proceedings in execution of such decree, or

[Ben. Act X

(Chapter VII.—Miscellaneous.—Sections 37, 38.)

- (ii) on an application for review of such decree made within one year of the date of commencement of this Act, and the provisions of rules 2 and 5 of Order XLVII of the First Schedule to the Code of Civil Procedure, 1908, shall not apply to any such application ;

Act V
of 1908.

- (b) any Court before which an appeal is pending in respect of a decree referred to in clause (a) may either itself exercise the like powers as may be exercised under sub-sections (1) and (2), or refer the case to the Court which passed the decree directing such Court to exercise such powers, and such Court shall after exercise thereof return the record with the additional evidence, if any, taken by it and its findings and the reasons therefor to the Appellate Court and thereupon the provisions of rule 26 of Order XLI of the First Schedule to the Code of Civil Procedure, 1908, shall apply.

Prohibition of execution of decrees by arrest and detention in prison.

37. Notwithstanding anything contained in any law for the time being in force, no Court shall order execution of a decree passed in any suit to which this Act applies by arrest and detention in prison of the judgment-debtor.

Inquiry for taking accounts and declaring the amount due.

38. (1) Any borrower may make an application at any time to a Court which would have jurisdiction to entertain a suit by the lender for the recovery of the principal and interest of a loan made before or after the commencement of this Act for taking accounts and for declaring the amount due to the lender. Such application shall be in the prescribed form and shall be accompanied by a fee of one rupee, and on receipt of such application the Court shall cause a notice thereof to be served on the lender.

(2) The Court shall thereafter take an account of the transactions between the parties and shall declare the amounts, if any,—

- (a) payable and already due,
(b) payable but not yet due

by the borrower to the lender, whether as principal or interest or both. In taking accounts under this section the Court shall follow the same procedure as it does in regard to civil suits and, so far as may be, the provisions of Chapters IV, VI and VII.

(3) A proceeding under this section shall be deemed to be a suit for the purposes of section 11 of the Code of Civil Procedure, 1908, and a declaration under this section shall be subject to appeal, if any, as if it were a decree of the Court, and every decision in appeal shall be subject to appeal to the High Court in the same manner as a decree passed in appeal.

of 1940.]

(Chapter VII.—Miscellaneous.—Sections 39, 40.)

39. (1) Where any sum of money has been declared under sub-section (2) of section 38 to be payable by the borrower to the lender as principal or interest or both, or where a borrower has sent to a lender by postal money order any sum of money due from him to the lender in respect of a loan and the lender has refused to accept the same, the borrower may apply in the prescribed manner to the Civil Court of the lowest grade having jurisdiction over the place where he resides for permission to deposit the said sum in Court to the account of the lender, and the Court shall keep the said sum in deposit.

Deposit in Court of money due to lender.

(2) The Court shall thereupon cause notice of the deposit to be served on the lender, and the lender may on presenting a petition, verified as for a plaint and stating the sum then due in respect of the loan and his willingness to accept the money so deposited, receive the sum :

Provided that in accepting any sum deposited under this section, a lender shall not be bound by any statement made by the borrower in depositing the same :

Provided also that, if the Court is satisfied that the lender has, without reasonable excuse, refused to accept any sum sent to him by postal money order by the borrower in respect of the loan, it may direct the payment to the borrower, from the money so deposited or otherwise, of such sum as damages and costs as it thinks fit.

(3) Notwithstanding any agreement between the parties, when the borrower has deposited in Court under this section any sum due in respect of the loan, if such sum is in payment of the principal or any part thereof, the interest on such principal or part shall cease from the date of the service of notice on the lender under sub-section (2).

(4) Nothing in this section shall affect the operation of sections 83 and 84 of the Transfer of Property Act, 1882, in regard to loans to which those sections apply.

IV of 1882.

40. (1) No lender shall take from a borrower or intending borrower any note, promise to pay, power of attorney, bond or security which does not state the actual amount of the loan, the rate of interest charged and the time, if any, within which the principal is stipulated to be repaid in full, or which states any of such particulars incorrectly, nor shall he take from any borrower or intending borrower any instrument in which any entry is left blank for completion at a later date.

Entry of an amount in a bond, etc., different to the amount actually lent to be an offence.

(2) Whoever intentionally contravenes the provisions of sub-section (1) shall, on conviction, be punishable with simple imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

(Chapter VII.—Miscellaneous.—Section 41.)

(3) No money-lender shall take from any borrower or intending borrower any note, promise to pay, power of attorney, bond or security which describes or refers to as a commercial loan any loan which is not a commercial loan.

(4) Notwithstanding anything contained in any law for the time being in force, any note, promise to pay, power of attorney, bond, security or document referred to in sub-section (1) or sub-section (3) shall be void and unenforceable.

(5) Notwithstanding anything contained in any law for the time being in force, in any suit, or proceeding the burden of proving that a loan is a commercial loan shall be on the money-lender who advanced the loan.

Penalty
for mole-
station.

41. (1) Whoever molests, or abets the molestation of, a debtor for the purpose of recovering or attempting to recover, a debt shall be punishable, on conviction, with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both.

Explanation.—For the purposes of this section, a person who, with intent to cause another person to abstain from doing any act which he has a right to do or to do any act which he has a right to abstain from doing,—

- (a) obstructs or uses violence to or intimidates such other person, or
- (b) persistently follows such other person from place to place or interferes with any property owned or used by him or deprives him of, or hinders him in the use thereof, or
- (c) loiters or does any similar act at or near a house, building or place where such other person resides or works or receives his pay or wages or carries on business or happens to be—

shall be deemed to molest such other person :

Provided that a person who attends at or near such house, building or place for the purpose only of making a formal demand for repayment of a loan due or of obtaining or communicating information shall not be deemed to molest.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence under this section shall be cognisable and bailable. Act V of 1898.

(3) Nothing in this section shall be deemed to restrict the provision of the Bengal Workmen's Protection Act, ¹[1935].

Ben. Act
IV of
1935.

¹These figures within square brackets were substituted for the figures "1934" by section 2 and the First Schedule to the West Bengal Repeal and Amending Act, 1948 (West Ben. Act VII of 1948).

of 1940.]

(Chapter VII.—Miscellaneous.—Sections 42, 43.)

42. (1) When any money-lender or any servant or agent of, or any person responsible for the management of the money-lending business of, a money-lender knowingly and willfully commits, authorises or permits any default in complying with, or any contravention of, any provision of this Act, if the money-lender or such servant, agent or person is—

General provisions regarding penalties.

- (a) an individual, such individual, or
- (b) an undivided Hindu joint family, any member of such family who is knowingly and wilfully a party to such default or contravention, or
- (c) a body corporate, any director or officer of such body who is knowingly and wilfully a party to such default or contravention, or
- (d) an unincorporated body, any member of such body who is knowingly and wilfully a party to such default or contravention,

shall, where a specific penalty has been provided in this Act, be punishable under the provisions of this Act providing such penalty, and where no such specific penalty has been provided, be punishable on conviction—

- (i) for the first offence, with fine which may extend to two hundred rupees,
- (ii) for the second offence, with fine which may extend to five hundred rupees, and
- (iii) for any subsequent offence, with rigorous imprisonment which may extend to three months and shall also be liable to fine.

(2) No Court shall take cognizance of an offence punishable under sub-section (1) except on the complaint in writing of the ¹[State] Registrar or a Registrar or of a person authorised in this behalf by the ¹[State] Registrar or a Registrar.

(3) The ¹[State] Registrar may order the withdrawal of a complaint made under sub-section (2), and, if he does so, shall forward a copy of such order to the Court, and upon receipt thereof by the Court, no further proceedings shall be taken on the complaint.

(4) No Court inferior to that of a Presidency Magistrate or a Subdivisional Magistrate or a Magistrate of the first class shall try an offence punishable under sub-section (1).

43. No suit, prosecution or proceeding shall lie against any servant of the ²[Government] * * * for anything which is in good faith done or intended to be done under this Act.

Protection to persons acting under this Act.

¹See foot-note 5 on p. 121, *ante*.

²See foot-note 2 on p. 126, *ante*.

³See foot-note 3 on p. 126, *ante*.

(Chapter VII.—Miscellaneous.—Section 44.)

Power to
make
rules.

44. (1) The ¹[State] Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for the following matters, namely :—

- (a) the conditions referred to in the proviso to section 3 ;
- (b) the control to be exercised by the ¹[State] Registrar over Registrars and Sub-Registrars and by a Registrar over Sub-Registrars ;
- (c) the form in which registers under section 7 shall be maintained ;
- (d) the form and manner in which an application for the grant of a licence shall be made, and the particulars to be therein contained ;
- (e) the manner in which licence fees and penalties shall be paid ;
- (f) the form of licences ;
- (g) the form of, and the fee payable on, an application under sub-section (2) of section 14 ;
- (h) the procedure to be followed by a Competent Court or by a Registrar in proceedings under section 16 ;
- (i) the form in which a Court shall send the substance of the order referred to in sub-section (5) of section 20, and the method of circulation of the same to other Registrars ;
- (j) the form in which a money-lender shall maintain his cash book, ledger and receipt book ;
- (k) the form of, and the particulars to be contained in, the statement to be delivered under sub-section (2) of section 24 ;
- (l) the form of the statements to be furnished under section 25 and the fee to be paid under the proviso to sub-section (3) of that section ;
- (m) the form in which information shall be supplied to an assignee under clause (b) of sub-section (1) of section 28 ;
- (n) the form in which notice shall be given by the plaintiff to the defendant under sub-clause (ii) of clause (a) of sub-section (1) of section 34, and by the decree-holder to the judgment-debtor under sub-section (2) of that section ;
- (o) the form of an application under section 38 ; and
- (p) the manner in which an application under section 39 shall be made.

¹See foot-note 5 on p. 121, ante.

of 1940.]

(Chapter VII.—Miscellaneous.—Section 45—The Schedule.)

Ben. Act
VII of
1933.

45. The Bengal Money-lenders Act, 1933, shall not apply to any loan to which this Act applies nor to any transaction connected with such loan.

Bengal
Act VII
of 1933
not to
apply to
loans
to which
this Act
applies.

THE SCHEDULE.

[See sections 14(1)(b) and 15.]

Act XLV
of 1860.

Any offence punishable under any of the following sections of the Indian Penal Code, namely, sections 379 to 382, 384 to 389, 392 to 404, 406 to 409, 411 to 414, 417 to 424, 449, 450, 451 (with intent to commit theft), 454 (with intent to commit theft), 455, 457 (with intent to commit theft), 458 to 462, 465, 477 and 477A or

VI of 1898.

under section 52 of the Indian Post Office, Act, 1898.

Bengal Act XI of 1940¹

THE ADMINISTRATOR GENERAL'S (BENGAL AMENDMENT) ACT, 1940.

ADAPTED

.. { The Indian Independence
(Adaptation of Bengal and
Punjab Acts) Order, 1948.
The Adaptation of Laws
Order, 1950.

[8th August, 1940.]

An Act to amend the Administrator General's Act, 1913, in its application to Bengal.

III of 1913. WHEREAS it is expedient to amend the Administrator General's Act, 1913, in its application to Bengal, in the manner herein-after appearing ;

It is hereby enacted as follows :—

-) 1. (1) This Act may be called the Administrator General's (Bengal Amendment) Act, 1940. Short title and commencement.
- (2) It shall come into force on such date² as the ³[State] Government may, by notification in the *Official Gazette*, appoint.
2. The Administrator General's Act, 1913 (hereinafter referred to as the said Act), shall, in its application to ⁴[West Bengal], be amended in the manner hereinafter provided. Application of Act.
3. In section 10 of the said Act for the words commencing "Whenever any person" and ending "at a Presidency-town" the following shall be substituted, namely :— Amend- ment of section 10 of Act III of 1913.
- "Whenever any person, not being an exempted person, has died leaving assets within ⁴[West Bengal], or being an exempted person, has died leaving assets within the local limits of the ordinary original civil jurisdiction of the High Court or within any area notified by the ³[State] Government in this behalf in the *Official Gazette*."

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 12th January, 1939, Part IVB, page 11 ; the Report of the Select Committee was presented to the Assembly on the 21st February, 1940 ; for the proceedings of the Assembly, see the proceedings of the meetings of the Bengal Legislative Assembly held on the 5th April and 5th December, 1939, 21st February, 12th, 15th and 28th March, 1940 ; for proceedings of the Council, see the proceedings of the meetings of the Bengal Legislative Council held on the 15th and 28th March, 1940.

²The Act came into force on the 1st day of September, 1940, vide Notification No. 2953J., dated the 23rd August, 1940, published in the *Calcutta Gazette*, dated the 29th August, 1940, Part I, page 2315.

³This word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴The words within square brackets were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

(Sections 4—7.)

Amend-
ment of
section 11.

4. In sub-section (1) of section 11 of the said Act—

(a) for the words commencing “Whenever any person” and ending “the said High Courts” the following shall be substituted, namely :—

“ Whenever any person, not being an exempted person, has died leaving assets within ¹[West Bengal], or being an exempted person, has died leaving assets within the local limits of the ordinary original civil jurisdiction of the High Court or within any area notified by the ²[State] Government in this behalf in the *Official Gazette* ” and

(b) for the words “such Court” the words “the Court” shall be substituted.

Amend-
ment of
section 16.

5. In section 16 of the said Act for the words “rupees one thousand” the words “two thousand rupees” shall be substituted.

Amend-
ment of
section 32.

6. In section 32 of the said Act after the words “ in the *Official Gazette*, the Administrator General may ” the following words shall be inserted, namely :—

“after the lapse of the said three months, or if he is required so to do in writing under the hand of the executor or the widow or other person entitled to administer the estate of the deceased, before the lapse of the said three months,”.

Insertion
of new
section
36A.

7. After section 36 of the said Act the following section shall be inserted, namely :—

“36A. When a certificate is revoked in accordance with the provisions of section 35, all payments

<p>Payment to holder of certificate before it is revoked.</p>	<p>made <i>bona fide</i> under such certificate to the holder thereof before such revocation, shall, notwithstanding such revocation, be a legal discharge to the person making the same ; and the holder of such certificate may retain, and reimburse himself in respect of, any payments made by him which the person to whom a certificate or probate or letters of administration may afterwards be granted, might lawfully have made.”.</p>
---	---

¹See foot-note 4 on p. 149, *ante*.

²See foot-note 3 on p. 149, *ante*.

of 1940.]

(Sections 8, 9.)

8. In sub-section (2) of section 40 of the said Act after the word "payment" the words "of the amount decreed or ordered by the court to be paid" shall be inserted. Amendment of section 40.

9. For clause (a) of section 45 of the said Act the following clauses shall be substituted, namely :— Amendment of section 45.

"(a) whether the accounts have been audited in the prescribed manner,

(aa) whether, so far as can be ascertained by such audit, the accounts contain a full and true account of everything which ought to be inserted therein,".

Bengal Act XII of 1940¹

THE OFFICIAL TRUSTEES (BENGAL AMENDMENT) ACT, 1940.

ADAPTED .. } The Indian Independence
(Adaptation of Bengal and
Punjab Acts) Order, 1948.
The Adaptation of Laws
Order, 1950.

[8th August, 1940.]

An Act to amend the Official Trustees Act, 1913, in its application to Bengal.

II of 1913. WHEREAS it is expedient to amend the Official Trustees Act, 1913, in its application to Bengal, in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Official Trustees (Bengal Amendment) Act, 1940.

Short
title
and com-
mence-
ment.

(2) It shall come into force on such date² as the ³[State] Government may, by notification in the *Official Gazette*, appoint.

2. ³The Official Trustees Act, 1913, shall, in its application to ⁴[West Bengal], be amended in the manner hereinafter provided.

Appli-
cation of
Act.

3. For clause (a) of sub-section (2) of section 19 of the Official Trustees Act, 1913, the following clauses shall be substituted, namely :—

Amend-
ment of
section 19
of Act II
of 1913.

“(a) whether the accounts have]been audited in the prescribed manner, and

(aa) whether, so far as can be ascertained by such audit, the accounts contain a full and true account of everything which ought to be contained therein, and”.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 12th January, 1939, Part IVB, page 12 ; the Report of the Select Committee was presented to the Assembly on the 21st February, 1940 ; for the proceedings of the Assembly, see the proceedings of the meetings of the Bengal Legislative Assembly held on the 5th April and 5th December, 1939, 21st February and 12th March, 1940 ; for the proceedings of the Council, see the proceedings of the meetings of the Bengal Legislative Council held on the 15th and 28th March, 1940.

²The Act came into force on the 1st day of September, 1940, vide Notification No. 2954J., dated the 23rd August, 1940, published in the *Calcutta Gazette*, dated the 29th August, 1940, Part I, page 2315.

³The word within square brackets was substituted for the word “ Provincial ” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴The words within square brackets were substituted for the word “ Bengal ” by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

Bengal Act XIII of 1940¹

THE BENGAL REVENUES (CHARGED EXPENDITURE) ACT, 1940.

ADAPTED .. The Adaptation of Laws Order,
1950.

[12th September, 1940.]

An Act to declare certain expenditure to be expenditure charged upon the revenues of the Province.

WHEREAS it is expedient to declare the contributions payable under certain enactments, and the grants to be made to certain local authorities by the Provincial Government to be expenditure charged upon the revenues of the Province ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Revenues (Charged Expenditure) Act, 1940.

Short title and commencement.

(2) It shall come into force on the first day of April, 1941.

2. The contributions payable by the ²[State] Government under each enactment specified in the first column of the First Schedule to this Act, or so much of such contribution as is specified in the corresponding entry in the third column of the said Schedule, is hereby declared to be expenditure charged upon the revenues of the ³[State].

Certain contributions to be charged.

3. (1) In respect of each enactment specified in the Second Schedule to this Act, the ²[State] Government shall, in such manner, and by such date as it may determine, make in each year from ²[State] revenues, a grant approximately equal, in the opinion of the ²[State] Government, to the net sum which, by virtue of the provisions of section 136 of the Government of India Act, 1935, and of the Government of India (Adaptation of Indian Laws) Order, 1937, would have been payable in that year to ²[State] revenues under that enactment and which, but for the said provisions, would have been payable in that year to a local authority.

Certain grants to be made and charged.

(2) All grants payable under the provisions of sub-section (1) are hereby declared to be expenditure charged upon the revenues of the ³[State].

(3) The ²[State] Government may, by notification in the *Official Gazette*, include in, or exclude from, the Second Schedule any appropriate enactment.

(4) The reference in sub-section (1) to the Second Schedule shall be construed as a reference to such Schedule as for the time being amended under sub-section (3).

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 4th July, 1940, Part IVA., page 136 ; for the proceedings of the Assembly see the proceedings of the meetings of the Bengal Legislative Assembly held on the 6th August, 1940 ; for proceedings of the Council see the proceedings of the meetings of the Bengal Legislative Council held on the 9th, 13th and 19th August, 1940.

²This word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³This word within square brackets was substituted for the word "Province", *ibid*.

(The First Schedule and the Second Schedule.)

THE FIRST SCHEDULE.

(See Section 2.)

Short title. 1	Section. 2	Contribution payable. 3	
1* * *			
1* * * *	*	*	
<i>Bengal Acts.</i>			
The Howrah Bridge Act, 1926.	11	The whole.	Ben. Act IV of 1926.
The Bengal Motor Vehicles Tax Act, 1932.	10	The whole.	Ben. Act I of 1932.
The Albert Victor Leper Hospital Act, 1935.	7	The whole.	Ben. Act IX of 1935.

THE SECOND SCHEDULE.

*(See Section 3.)**Central Acts.*

The Howrah Offences Act, 1857.	XXI of 1857.
The Cattle-trespass Act, 1871.	I of 1871.
The Bengal Tenancy Act, 1885.	VIII of 1885.

The heading "Central Act" and the entry relating to the "Dacca University, 1920" were omitted by paragraph (1) of Article 3 and the Schedule to the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

The Albert Victor Leper Hospital Act, 1935 (Ben. Act IX of 1935) was repealed by section 7 of the Albert Victor Leper Hospital (Abolition) Act, 1956 (West Ben. Act XV of 1956).

(The Second Schedule.)

Bengal Acts.

Ben. Act
IX of
1880.

The Cess Act, 1880.

Ben. Act
I of 1885.

The Bengal Ferries Act, 1885.

Ben. Act
III of
1885.

The Bengal Local Self-Government Act of 1885.

Ben. Act I
of 1893.

¹The Licensed Warehouses and Fire Brigade Act, 1893.

Ben. Act I
of 1919.

The Calcutta Hackney Carriage Act, 1919.

Ben. Act
V of 1919.

The Bengal Village Self-Government Act, 1919.

Ben. Act
VI of
1919.

The Bengal Food Adulteration Act, 1919.

Ben. Act
III of
1923.

²The Calcutta Municipal Act, 1923.

Ben. Act
VII of
1930.

The Bengal (Rural) Primary Education Act, 1930.

Ben. Act
XV of
1932.

The Bengal Municipal Act, 1932.

¹The Licensed Warehouses and Fire Brigade Act 1893 (Ben. Act I of 1893) was repealed by section 39 of the West Bengal Fire Services Act, 1950 (West Ben. Act XVIII of 1950).

²The Calcutta Municipal Act, 1923 (Ben. Act III of 1923) was repealed and re-enacted by the Calcutta Municipal Act, 1951 (Ben. Act XXXIII of 1951).

Bengal Act XVI of 1940

THE BENGAL SHOPS AND ESTABLISHMENTS ACT, 1940.¹

AMENDED West Ben. Act LXIV of 1950.

ADAPTED { The Indian Independence
(Adaptation of Bengal and
Punjab Acts) Order, 1948.
The Adaptation of Laws Order,
1950.

[31st October, 1940.]

An Act to regulate the holidays, payment of wages and leave of persons employed in shops, commercial establishments and establishments for public entertainment or amusement and the hours of work of persons employed in shops and establishments for public entertainment or amusement.

WHEREAS it is expedient to regulate the holidays, payment of wages and leave of persons employed in shops, commercial establishments and establishments for public entertainment or amusement and the hours of work of persons employed in shops and establishments for public entertainment or amusement ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Shops and Establishments Act, 1940.

(2) It extends to the whole of ²[West Bengal].

(3) It shall come into force on such date³ as the 'State Government may, by notification in the *Official Gazette*, appoint.

(4) It shall apply in the first instance to Calcutta as defined in clause (11) of section 3 of the Calcutta Municipal Act, 1923⁵, to the suburbs of Calcutta as specified by notification under section 1

Short title,
extent and
commence-
ment.

Ben. Act
III of
1923.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 6th December, 1939, Part IVB., page 305 ; the Report of the Select Committee was presented to the Council on the 26th July, 1940 ; for the proceedings of the Council, see the proceedings of the meetings of the Bengal Legislative Council held on the 6th and 11th December, 1939, 26th and 31st July, 12th, 13th and 14th August and 18th September, 1940 ; for the proceedings of the Bengal Legislative Assembly see the proceedings of the meetings of the Bengal Legislative Assembly, held on the 11th and 12th September, 1940.

²These words within square brackets were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³The Act came into force on the 1st day of April, 1941, vide Notification No. 850 Com., dated the 20th March, 1941, published in the *Calcutta Gazette*, dated the 27th March, 1941, Part I, page 739.

⁴The word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁵The Calcutta Municipal Act, 1923 (Ben. Act III of 1923), was repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951).

(Section 2.)

of the Calcutta Suburban Police Act, 1866, and to the Municipality of Howrah as constituted under the Bengal Municipal Act, 1932; and thereafter it shall apply to such other areas, or to such shops or establishments or classes of shops or establishments in such other areas, as the ¹State Government may specify by notification.

Ben. Act
II of 1866.
Ben. Act
XV of
1932.

Def-
initions.

2. In this Act, unless there is anything repugnant in the subject or context—

(1) “Closed” means not open for the service of any customer ²[or for any other purpose whatsoever relating to business];

(2) “commercial establishment” means an establishment in which there is conducted the business of advertising, commission, forwarding or commercial agency, a clerical department of a factory or of any industrial or commercial undertaking, an insurance company, joint stock company, bank, broker’s office, or exchange, or such other establishment or class thereof as the ¹State Government may, by notification, declare to be a commercial establishment for the purposes of this Act, but does not include a shop or an establishment for public entertainment or amusement;

(3) “day” means a period of twenty-four hours beginning at midnight;

(4) “employer” means a person owning or having charge of the business of a commercial establishment or establishment for public entertainment or amusement, and includes an agent or manager of, and any other person acting on behalf of, such person in the general management or control of such establishment;

(5) “establishment for public entertainment or amusement” means a restaurant, eating-house, cafe, cinema, theatre and such other establishment or class thereof as the ¹State Government may, by notification, declare to be, for the purposes of this Act, an establishment for public entertainment or amusement, but does not include a shop or a commercial establishment;

(6) “factory” means a factory as defined in, or declared to be a factory under, the Factories Act, 1934³; XXV of 1934.

¹See foot-note 4 on page 159, *ante*.

²These words within square brackets were added by s. 2(a) of the Bengal Shops and Establishments (West Bengal Amendment) Act, 1950 (West Ben. Act LXIV of 1950).

³The Factories Act, 1934, was repealed and re-enacted by the Factories Act, 1948 (LXIII of 1948).

of 1940.]

(Section 2.)

- (7) "half day" means a period of six consecutive hours between the hours of half-past eight o'clock *ante meridiem* and half-past eight o'clock *post meridiem* ;
- (8) "notification" means a notification published in the *Official Gazette* ;
- (9) "person employed" means—
- (i) in the case of a shop, a person wholly or principally employed in the shop in connection with the business of the shop,
 - (ii) in the case of a commercial establishment, a person wholly or principally employed in connection with the business of the establishment or in the case of a factory, a member of the clerical staff employed in such factory,
 - (iii) in the case of an establishment for public entertainment or amusement, a person wholly or principally employed in the preparation or serving of food or drink, or in attendance upon customers, or in cleaning any part of the establishment or the utensils used therein, or as attendant, cashier, clerk, door-keeper, operator, or usher, or in some other similar capacity,
- but does not include a shop-keeper or employer or the husband, wife, child, father, mother, brother or sister of a shop-keeper or employer who lives with, and is dependant on, such shop-keeper or employer ;
- (10) "prescribed" means prescribed by rules made under this Act ;
- (11) "rules" means rules made under this Act ;
- (12) "shop" means any premises used wholly or in part for the wholesale or retail sale of commodities or articles, either for cash or on credit, and ¹[includes any offices, store-rooms, godowns or ware-houses, whether in the same premises or otherwise, used in connection with such sale or with the storage of commodities or articles for the purpose of such sale and also includes] such other premises as the ²State Government may, by notification, declare to be a shop for the purposes of this Act, but does not include a commercial establishment or an establishment for public entertainment or amusement;

¹These words within square brackets were inserted by s. 2(b) of the Bengal Shops and Establishments (West Bengal (Amendment) Act, 1950 (West Ben. Act LXIV of 1950).

²See foot-note 4 on page 159, *ante*.

(Sections 3, 4.)

- (13) "shop-keeper" means a person owning or having charge of the business of a shop, and includes an agent or manager of, and any other person acting on behalf of, such person in the general management or control of a shop; ¹*
- (14) "week" means a period of seven days beginning at midnight on Saturday; ²[and]
- ³(15) "young person" means a person who has not completed his seventeenth year.

References
to time of
day.

3. References to the time of day in this Act shall be deemed to be references to Indian standard time, which is five and a half hours ahead of Greenwich mean time.

Powers of
the
State
Govern-
ment.

4. (1) The State Government may, for the purposes of all or any of the provisions of this Act, by notification declare—

- ⁵(a) to be a shop, any premises which are not premises of a commercial establishment or of an establishment for public entertainment or amusement,
- (b) to be a commercial establishment, any establishment which is not a shop or an establishment for public entertainment or amusement, and
- (c) to be an establishment for public entertainment or amusement, any establishment which is not a shop or a commercial establishment.

(2) The provisions of this Act specified in a notification under sub-section (1) shall apply to any premises or establishment which, under the provisions of that sub-section, has been declared to be a shop or a commercial establishment or an establishment for public entertainment or amusement, as the case may be.

⁶(3) The State Government may, by notification on account of such holiday or other occasion as may be prescribed, suspend the operation of all or any of the provisions of this Act in respect of any shop or establishment or class of shop or establishment for such period and subject to such conditions as it thinks fit.

¹The word "and" was omitted by s. 2(c) of the Bengal Shops and Establishments (West Bengal Amendment) Act, 1950 (West Ben. Act LXIV of 1950).

²The word "and" was added by s. 2(d), *ibid*.

³Clause (15) was inserted by s. 2(e), *ibid*.

⁴See foot-note 4 on page 159, *ante*.

⁵For notification under s. 4(1)(a), *vide* Notification No. 3902Lab., dated the 28th October, 1948, published in the *Calcutta Gazette* of the 4th November, 1948, Part I, page 1464.

⁶For notifications under sub-section (3) of section 4, *vide* Notifications Nos. 3822Com., dated the 23rd November, 1943, published in the *Calcutta Gazette*, of the 2nd December, 1943, Part I, page 1738, and 2758Lab., dated the 6th June, 1949, published in the *Calcutta Gazette* of the 16th June, 1949, Part I, page 984.

of 1940.]

(Section 5.)

5. (1) Nothing in this Act shall apply to—

- (a) offices of or under the Central or ¹State Government, the Reserve Bank of India, ²[any railway administration] or any local authority;
- (b) any railway service, water transport service, tramway or motor service, postal, telegraph or telephone service, any system of public conservancy or sanitation, any industry, business or undertaking which supplies power, light or water to the public and such other public utility companies or associations or classes thereof as the ¹State Government may, by notification, exempt from the operation of this Act;
- (c) clubs, residential hotels and boarding houses;
- (d) stalls and refreshment rooms at railway stations, docks, wharves and airports;
- (e) establishments for the treatment or care of the sick, infirm, destitute or mentally unfit;
- ³(f) such shops or classes of shops, dealing mainly in vegetables, meat, fish, dairy produce, bread, pastries, sweetmeats, flowers or other perishable commodities, as the ¹State Government may, by notification, exempt from the operation of this Act so far as the sale of these articles is concerned;
- (g) shops dealing mainly in medicines, surgical appliances, bandages or other medical requisites, so far as the sale of these articles is concerned;
- (h) shops dealing in articles required for funerals, burials or cremations so far as the sale of these articles is concerned;
- (i) shops dealing in tobacco, cigars, cheroots, cigarettes, *biris*, *pan*, liquid refreshments sold retail for consumption on the premises, ice, newspapers or periodicals, so far as the sale of these articles is concerned;
- (j) shops dealing in supplies, stores or other articles necessary for ships, so far as the sale of these articles for ships is concerned;
- (k) shops or stalls in any public exhibition or show, so far as such shops or stalls deal in retail trade which is solely subsidiary or ancillary to the main purposes of such exhibition or show;

Act not applicable to certain establishments, shops and persons.

¹See foot-note 4 on page 159, *ante*.

²These words within square brackets were substituted for the words "any Federal Railway" by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

³For notification under clause (f) of sub-section (1) of section 5, *vide* Notification No. 1602Com., dated the 14th May, 1941, published in the *Calcutta Gazette* of the 22nd May, 1941, Part I, page 1253.

(Section 5.)

- (l) shops or stalls in any public fair or bazar held for a charitable purpose ;
- (m) barbers' and hairdressers' shops ;
- (n) shops dealing in petroleum products or spare parts for motor vehicles ;
- (o) excise shops ;
- (p) any person employed in a managerial or confidential capacity, or as a traveller, canvasser, messenger, watchman or caretaker, or exclusively in connection with the collection, despatch, delivery, and conveyance or customs formalities of goods ¹[, except the provisions of sections 11 and 12] ;
- ²(q) such seasonal commercial establishments engaged in the purchase of raw jute or cotton or in cotton ginning or cotton or jute pressing, and the clerical departments of such seasonal factories, as the ³State Government may, by notification, exempt from the operation of this Act ;
- ⁴(r) such other establishments, shops or persons or classes of establishments, shops or persons, as the ³State Government may, by notification, exempt from the operation of all or any of the provisions of this Act.

⁵(2) Notwithstanding anything contained in sub-section (1), the ³State Government may, by notification, declare that any shop, establishment or person specified in that sub-section shall not be exempt from the operation of such provisions of this Act as may be specified in the notification and that the provisions of this Act specified in such notification shall apply to such shop, establishment or person.

¹These words and figures within square brackets were added by s. 3 of the Bengal Shops and Establishments (West Bengal Amendment) Act, 1950 (West Ben. Act LXIV of 1950).

²For notification under clause (q) of sub-section (1) of section 5, *vide* Notification No. 1603Com., dated the 14th May, 1941, published in the *Calcutta Gazette* of the 22nd May, 1941, Part I, page 1253.

³See foot-note 4 on page 159, *ante*.

⁴For notifications under clause (r) of sub-section (1) of section 5, *vide* Notification No. 993Com., dated the 31st March, 1941, published in the *Calcutta Gazette* of the 3rd April, 1941, Part I, page 809 ; Notification No. 6810-Lab., dated the 27th November, 1950, published in the *Calcutta Gazette* of the 7th December, 1950, Part I, pages 2455-56 ; Notification No. 875 Dis./D/78-4/52, dated the 22nd April, 1952, published in the *Calcutta Gazette* of the 1st May, 1952, Part I, page 1314; and Notification No. 2430Lab./1M-26/52, dated the 2nd August, 1952, published in the *Calcutta Gazette* of the 14th August, 1952, Part I, page 2598.

⁵For notifications under sub-section (2) of section 5, *vide* Notification No. 999Com., dated the 1st April, 1941, published in the *Calcutta Gazette* of the 3rd April, 1941, Part I, page 809 ; Notification No. 1604 Com., dated the 14th May, 1941, published in the *Calcutta Gazette* of the 22nd May, 1941, Part I, page 1253, and Notifications Nos. 759Com. and 760Com., both dated the 24th February, 1945, published in the *Calcutta Gazette* of the 8th March, 1945, Part I, page 382.

of 1940.]

(Sections 6, 7.)

6. (1) Every shop shall be entirely closed on at least one and a half days in each week, and every person employed in a shop shall be allowed as holidays at least one and a half days in each week :

Holidays
in shops.

Provided that, when there are conducted in a shop two or more trades or businesses, any of which is of such a character that, if it was the sole trade or business therein conducted, the provisions of this sub-section would not apply to that shop, such shop shall, so far as the conduct of that trade or business is concerned, be exempted from the operation of this sub-section.

(2) No deduction on account of any holiday allowed under sub-section (1) shall be made from the wages of any person employed in a shop.

(3) The day and the half day on which a shop shall be entirely closed in each week shall be such day and half day as may be specified by the shop-keeper in a notice, which shall be displayed in a conspicuous place in the shop:

Provided that no shop-keeper shall, more often than once in every three months, alter the day and half day so specified.

7. (1) No shop ¹[shall be opened before the hour of eight o'clock *ante meridiem* or] shall remain open after the hour of eight o'clock *post meridiem*; but any customer who was being, or was waiting in the shop to be, served at ²[the last mentioned hour] may be served during the period of thirty minutes immediately following ²[the last-mentioned hour]:

Hours of
work in
shops.

Provided that, when there are conducted in a shop two or more trades or businesses, any of which is of such character that, if it was the sole trade or business therein conducted, the provisions of this sub-section would not apply to that shop, such shop shall, so far as the conduct of that trade or business is concerned, be exempt from the operation of this sub-section.

(2) No person employed in a shop shall be required or permitted to work in such shop for more than ten hours in any one day and for more than fifty-six hours in any one week and after the hour of half-past eight o'clock *post meridiem*:

Provided that in any day and in any week in which there occurs stock-taking, making-up accounts, settlement or such other business operation as may be prescribed, and during such other periods as may be prescribed, a person employed in a shop may be required or permitted to work over-time in such shop for more than ten hours in such day and for more than fifty-six hours in such week,

¹These words within square brackets were inserted by s. 4 (a) of the Bengal Shops and Establishments (West Bengal Amendment) Act, 1950 (West Ben. Act LXIV of 1950).

²These words within square brackets were substituted for the words "such hour" by s. 4(b), *ibid*.

(Sections 8, 9.)

but so that the total number of hours so worked over-time by such person does not exceed one hundred and twenty in any one year.

(3) No person employed in a shop shall be required or permitted to work in such shop—

(a) for more than seven hours in any one day, unless he has been allowed an interval for rest of at least one hour during that day, and

(b) for more than five hours in any one day, unless he has been allowed an interval for rest of at least half an hour during that day.

(4) The periods of work and intervals for rest of each person employed in a shop shall be arranged by the shop-keeper so that together they do not extend over more than twelve hours in any one day:

Provided that, if on any day a shop is entirely closed for a continuous period of not less than three hours prior to the hour specified in sub-section (1), such periods of work and intervals for rest may together extend over not more than fourteen hours in that day.

Holidays
in com-
mercial
establish-
ments.

8. (1) Every person employed in a commercial establishment shall be allowed as holidays at least one and a half days in each week:

Provided that, when there are conducted in a commercial establishment two or more trades or businesses, any of which is of such a character that, if it was the sole trade or business therein conducted, the provisions of this sub-section would not apply to that commercial establishment, such commercial establishment shall, so far as the conduct of that trade or business is concerned, be exempt from the operation of this sub-section.

(2) No deduction on account of any holiday allowed under sub-section (1) shall be made from the wages of any person employed in a commercial establishment.

Holidays
in estab-
lishments
for public
entertain-
ment or
amuse-
ment.

9. (1) Every person employed in an establishment for public entertainment or amusement shall be allowed as holidays at least one and a half days in each week:

Provided that, when there are conducted in an establishment for public entertainment or amusement two or more trades or businesses, any of which is of such a character that, if it was the sole trade or business therein conducted, the provisions of this sub-section would not apply to that establishment, such establishment shall, so far as conduct of that trade or business is concerned, be exempt from the operation of this sub-section.

of 1940.]

(Sections 10—11.)

(2) No deduction on account of any holiday allowed under sub-section (1) shall be made from the wages of any person employed in an establishment for public entertainment or amusement.

10. (1) No person employed in an establishment for public entertainment or amusement shall be required or permitted to work in such establishment for more than ten hours in any one day:

Hours of work in establishments for public entertainment or amusement.

Provided that, during such periods as may be prescribed, a person employed in an establishment for public entertainment or amusement may be required or permitted to work over-time in such establishment for more than ten hours in any one day, but so that the total number of hours so worked over-time by such person does not exceed one hundred and twenty in any one year.

(2) No person employed in an establishment for public entertainment or amusement shall be required or permitted to work in such establishment—

(a) for more than eight hours in any one day unless he has been allowed an interval for rest of at least one hour during that day, and

(b) for more than six hours in any one day unless he has been allowed an interval for rest of at least half an hour during that day.

(3) The periods of work and intervals for rest of each person employed in an establishment for public entertainment or amusement shall be arranged by the employer of such person so that together they do not extend over more than fourteen hours in any one day.

10A. Notwithstanding anything contained in this Act—

Special provision for young persons.

(a) no young person employed in a shop or establishment for public entertainment or amusement shall be required or permitted to work in such shop or establishment for more than seven hours in any one day or for more than forty hours in any one week; and

(b) the periods of work of young persons in such shop or establishment during each day shall be so fixed that no period shall exceed four hours and that no such person shall work for more than four hours before he has had an interval for rest of at least one hour.

11. All wages payable to any person employed in a shop, commercial establishment or establishment for public entertainment or amusement shall be payable not later than the tenth day of the month immediately succeeding that in respect of which such wages are payable. Payment of wages.

¹This section 10A was inserted by s. 5 of the Bengal Shops and Establishments (West Bengal Amendment) Act, 1950 (West Ben. Act LXIV of 1950).

(Sections 12—13A.)

Leave.

12. A person employed in a shop, commercial establishment or establishment for public entertainment or amusement shall be entitled—

(a) after every twelve months' continuous employment, to privilege leave on full pay for ^{1*} * fourteen days, ^{2*}

³(aa) in every year, to sick leave on half pay for fourteen days on medical certificate obtained from a medical practitioner registered under the Bengal Medical Act, 1914, Ben. Act VI of 1914.

(b) in every year, to casual leave on ⁴[full pay] for ^{5*} * * ten days :

Provided that—

(i) privilege leave admissible under clause (a) may be accumulated up to a maximum of not more than twenty-eight days, ^{6*}

⁷(ia) sick leave admissible under clause (aa) may be accumulated up to a maximum of not more than fifty-six days; and

(ii) casual leave admissible under clause (b) shall not be accumulated.

Wages for over-time work.

13. When any person employed in any shop or establishment for public entertainment or amusement is required or permitted to work over-time in such shop or establishment in excess of the maximum limit of hours of work specified respectively in sub-section (2) of section 7 and sub-section (1) of section 10, the wages payable to such person in respect of such overtime work shall be calculated at the rate of one and ⁸[one-half] times the ordinary rate of wages payable to him, and such ordinary rate of wages shall be calculated in the manner prescribed.

Notice of termination of services.

***13A.** (1) No person who has been employed in a shop or establishment for public entertainment or amusement for a continuous period of not less than twelve months, shall, without sufficient cause, have his services terminated until he has been given one month's previous notice or has been paid one month's wages in lieu of such notice.

¹The words "a total period not exceeding" were omitted by s. 6 (1)(i) of the Bengal Shops and Establishments (West Bengal Amendment) Act, 1950 (West Ben. Act LXIV of 1950).

²The word "and" was omitted by s. 6 (1)(ii), *ibid.*

³This clause (aa) was inserted by s. 6(2), *ibid.*

⁴The words within square brackets were substituted for the words "half pay" by s. 6(3)(i), *ibid.*

⁵The words "a total period not exceeding" were omitted by s. 6(3)(ii), *ibid.*

⁶The word "and" was omitted by s. 6(4)a), *ibid.*

⁷This clause (ia) was inserted by s. 6(4)(b), *ibid.*

⁸This word within square brackets was substituted for the word, "one-quarter" by s. 7, *ibid.*

^{*}This section 13A was inserted by s. 8, *ibid.*

of 1940.]

(Sections 14—16.)

(2) Any person employed in such shop or establishment whose services have been terminated in contravention of the provisions of sub-section (1) may make an application to a Presidency Magistrate or a Magistrate of the First Class alleging such termination and if such Magistrate is satisfied that the services of such person have been terminated without sufficient cause, he may, for reasons to be recorded in writing, direct that the shop-keeper or the employer shall pay one month's wages as compensation to such person and thereupon the shop-keeper or the employer shall pay to such person the amount of compensation so directed to be paid.

(3) The amount of compensation payable under this section shall, for purposes of its recovery, be deemed to be a fine imposed under this Act.

(4) For the avoidance of doubt it is hereby declared that the provisions of sub-sections (2) and (3) shall be in addition to and not in derogation of the provisions of section 17 and that nothing in sub-section (2) of section 18 shall be deemed to require any complaint to be made under that sub-section before an application is made under sub-section (2).

14. (1) Every shop-keeper and employer of an establishment for public entertainment or amusement shall for the purposes of this Act maintain such records and registers, and display such notices, as may be prescribed.

Main-
tenance of
records,
registers
and
notices.

(2) Every employer of a commercial establishment shall for the purposes of this Act maintain such records and registers, as may be prescribed.

15. (1) The State Government may, by notification, appoint such persons or such class of persons as it thinks fit to be Inspectors for the purposes of this Act within such local limits as it may assign to them respectively.

Inspection.

(2) All Inspectors appointed under sub-section (1) shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Act XLV
of 1896.

16. Subject to the rules, an Inspector appointed under section 15 may, for the purposes of this Act and within the local limits for which he is appointed, at all reasonable times enter into any place which is, or which he has reason to believe is, a shop or a commercial establishment or an establishment for public entertainment or amusement, with such assistants, if any, being servants of the Government, and make such examination [as may be prescribed

Powers of
Inspectors.

¹See foot-note 4 on page 159, *ante*.

²The word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³These words within square brackets were substituted for the words "of that place and of any prescribed record, register or notice maintained therein, as may be prescribed, and may require such explanation of any prescribed record, register or notice", by s. 9 of the Bengal Shops and Establishments (West Bengal Amendment) Act, 1950 (West Ben. Act LXIV of 1950).

(Sections 17—20.)

of that place and of any document therein, including in particular any prescribed record, register or notice or any municipal licence, account book or ledger and may require such explanation of any such document] as he may consider necessary for the purposes of this Act :

Provided that no person shall be required under this section to answer any question or give any evidence tending to criminate himself.

Penalties.

17. (1) Whoever contravenes any of the provisions of sections 6, 7, 8, 9 ¹[10, 10A, 13A or sub-section (2) of section 20] shall, on conviction, be punishable with fine which, for a first offence, may extend to two hundred and fifty rupees and, for a second or any subsequent offence, may extend to five hundred rupees.

(2) Whoever contravenes any of the provisions of sections 11, 12, 13 or 14 and whoever, having custody of any ²[document referred to in section 16], refuses or, without sufficient cause, fails to ³[produce such document or give explanation thereof] on being so required by an Inspector under the provisions of section 16, shall, on conviction, be punishable with fine which may extend to fifty rupees.

Procedure.

18. (1) No Court inferior to a Presidency Magistrate or a Magistrate of the First Class shall try an offence punishable under this Act.

(2) No Court shall take cognizance of an offence punishable under this Act except upon complaint made by an Inspector appointed under section 15.

Indemnity.

19. No suit, prosecution or legal proceeding whatever shall lie against any person in respect of anything in good faith done or intended to be done under this Act or the rules.

Saving of certain rights and privileges.

20. ⁴(1) Nothing in this Act shall affect any right or privilege to which any person employed in any shop, commercial establishment or establishment for public entertainment or amusement is entitled at the date of the commencement of this Act under any other law for the time being in force or under any contract, custom or

¹These figures, letters, words and brackets within square brackets were substituted for the word and figures "or 10" by s. 10 (a) of the Bengal Shops and Establishments (West Bengal Amendment) Act, 1950 (West Ben. Act LXIV of 1950).

²These words and figures within square brackets were substituted for the words "prescribed record, register or notice" by s. 10(b)(i), *ibid*.

³These words within square brackets were substituted for the words "produce it" by s. 10 (b)(ii), *ibid*.

⁴Section 20 was renumbered as sub-section (1) of that section and sub-section (2) was added by s. 11, *ibid*.

of 1940.]

(Section 21.)

usage which is in force on that date, if such right or privilege is more favourable to him than any right or privilege conferred upon him by this Act.

¹(2) No person shall interfere with the enjoyment of any right or privilege protected under sub-section (1).

21. (1) The ²State Government may, after previous publication, make rules for carrying out the purposes of this Act.

Power to
make
rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the holidays and other occasions on account of which a notification may be issued under sub-section (3) of section 4 ;
- (b) the business operations in connection with which, and the periods during which, persons employed in shops and establishments for public entertainment and amusement may work over-time or in excess of the limit provided respectively in sub-section (2) of section 7, and sub-section (1) of section 10 ;
- (c) the manner of calculating ordinary rates of wages for the purposes of section 13 ;
- (d) the records and registers to be maintained, and the notices to be displayed, by a shop-keeper and an employer under section 14 ;
- (e) the manner of appointment and qualifications of Inspectors appointed under section 15 ;
- (f) the manner in which Inspectors appointed under section 15 shall exercise the powers conferred by section 16.

(3) In making any rule under this section the ²State Government may direct that any person committing a breach thereof shall, on conviction, be punishable with fine, which may extend to fifty rupees, and where the breach is a continuing one, with a further fine which may extend to ten rupees for every day, after the first, during which the breach continues.

¹See foot-note 4 on page 170, *ante*.

²See foot-note 4 on page 159, *ante*.

Bengal Act XXI of 1940

THE BENGAL CO-OPERATIVE SOCIETIES ACT, 1940.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTION.

1. Short title, extent and commencement.
2. Definitions.
3. [*Repealed.*]
4. Saving of existing societies, etc.
5. Construction of references to Act II of 1912.
6. Act VII of 1913 not to apply.
7. Prohibition of the use of the word "co-operative".
8. Power to exempt co-operative societies from the provisions of the Act.

CHAPTER II.

REGISTRATION.

9. Appointment of Registrar and of persons to assist him.
10. Conferment of powers of Registrar.
11. Societies which may be registered.
12. Conditions of registration.
13. Applications for registration.
14. Registrar to decide certain questions.
15. Registration.
16. Evidence of registration.
17. Amendment of by-laws of a co-operative society.
18. Power of financing bank to direct amendment of by-laws.

CHAPTER III.

STATUS AND MANAGEMENT OF CO-OPERATIVE SOCIETIES.

19. Co-operative societies to be bodies corporate.
20. Final authority of a co-operative society.
21. Annual general meeting.
22. Special general meeting.
23. Managing committee.
24. Power to depute servant of the Government to manage affairs of a co-operative society.
25. Dissolution and reconstitution of managing committee.
26. Dissolution of managing committee and appointment of person to manage affairs of co-operative society.
27. Tenure of office of person appointed under section 26.
28. Management of co-operative society on dissolution of its committee.

SECTION.

CHAPTER IV.

DUTIES AND OBLIGATIONS OF CO-OPERATIVE SOCIETIES.

29. Address of co-operative society.
30. Copy of Act, etc., to be open to inspection.
31. Publication of annual balance sheet.
32. Restrictions on borrowing.
33. Power of State Government to guarantee principal and interest of debentures.
34. Issue of guaranteed debentures.
35. Trustee to be a corporation sole.
36. Powers and functions of Trustee.
37. Debenture-holders' charge on assets.
38. Power of State Government to give financial assistance.
39. Restrictions on lending.
40. Restrictions on other transactions with non-members.
41. Liability to furnish information.

CHAPTER V.

PRIVILEGES OF CO-OPERATIVE SOCIETIES.

42. Change of name and its effect.
43. Change of liability.
44. Co-operative Society's power to call for statement of claims.
45. Co-operative society's power to call for notice of rent suit.
46. Limitation.
47. Debts due to co-operative societies to be a first charge.
48. Levy of water rate on non-members.
49. Levy of embankment protection rate on non-members.
50. Charge and set off in respect of share or interest of members.
51. Deduction of dues to co-operative societies from salaries of members.
52. Exemption from compulsory registration of instruments relating to shares and debentures of co-operative society.
53. Power to remit certain duties, fees, etc.
54. Power of Registrar to sanction a compromise between a co-operative society and its creditors.

CHAPTER VI.

PROPERTY AND FUNDS OF CO-OPERATIVE SOCIETIES.

55. Investment of funds.
56. Reserve fund.
57. Distribution of profits.
58. Contribution to charitable purposes.
59. Provident fund.

of 1940.]

SECTION.

CHAPTER VII.

PRIVILEGES, LIABILITIES AND OBLIGATIONS OF MEMBERS OF CO-OPERATIVE SOCIETIES.

60. Votes of members.
61. Members not to exercise rights till due payment made.
62. Members to furnish information as to their financial position and alienation of their immovable property.
63. Loans to be used for the object for which advanced.
64. Share or interest not liable to attachment.
65. Liability of members.
66. Liability of past member and of estate of deceased member.
67. Restrictions on interest of members of society with limited liability and share capital.
68. Restrictions on transfer of share or interest.
69. Nomination of transferee.
70. Disposal of deceased member's share or interest.
71. Disposal of share or interest of expelled, resigned or insane member.
72. Restriction on transfer of possession of and interest in land held under a co-operative society.
73. Disposal of share or interest of a member of a wound up co-operative society.
74. Disposal of moneys due to a deceased, expelled, resigned or insane member.
75. Bar to certain claims.

CHAPTER VIII.

AUDIT, INSPECTION AND INQUIRY.

76. Registrar to be responsible for audit.
77. Power to the Registrar to have the accounts written up.
78. Nature of audit.
79. Audit officer's report.
80. Rectification of defects.
81. Constitution of an authority to supervise working of co-operative societies.
82. Inspection by Registrar or financing bank.
83. Inspection of books of an indebted co-operative society.
84. Inquiry by Registrar.
85. Costs of inspection or inquiry.

CHAPTER IX.

SETTLEMENT OF DISPUTES.

86. Disputes to be referred to Registrar.
87. Settlement of disputes.
88. Force and effect of certain awards.

Section.

CHAPTER X.

WINDING UP AND DISSOLUTION OF CO-OPERATIVE SOCIETIES.

89. Order for the winding up of a co-operative society.
90. Appointment of a liquidator.
91. Powers of a liquidator.
92. Priority of contributions assessed by liquidator.
93. Liquidator to deposit the books and submit a final report.
94. Power of Registrar to cancel order of winding up or of registration of a co-operative society.

CHAPTER XI.

SPECIAL PROVISIONS FOR CO-OPERATIVE LAND MORTGAGE BANKS.

95. Right of co-operative land mortgage bank to pay prior debts of mortgagor.
96. Restriction on mortgagor's transfer of or charge on equity of redemption.
97. Mortgage not to be questioned on insolvency of mortgagor.
98. Priority of mortgage over claims arising under Act XIX of 1883.
99. Power to distrain.
100. Distribution of proceeds of sale or distraint.
101. Power to bring mortgaged property to sale without the intervention of the Court.
102. Appointment of Sale Officer.
103. Notice requiring payment from persons interested.
104. Application for sale and method of sale.
105. Application to set aside a sale on deposit.
106. Setting aside and confirmation of sales.
107. Distribution of sale-proceeds and bar to certain claims.
108. Certificate to be issued to purchaser and to be entered by the registering officer in his register.
109. Delivery of property to purchaser.
110. Right of co-operative land mortgage bank or association to purchase at a sale under this chapter.
111. Title of purchaser not to be questioned.
112. Power to appoint a receiver.
113. Expenses, remuneration and duties of a receiver.
114. Powers of co-operative land mortgage bank if the mortgaged property is destroyed or the security is rendered insufficient.
115. Power of the Trustee and a central co-operative land mortgage bank to direct or take certain action.
116. Officers of co-operative land mortgage and central co-operative land mortgage banks and Sale Officers not to bid at sales.
117. Notice of sale, under Chapter XIV of Act VIII of 1885.
118. Notice of sale, and deposit for protection from sale, under Bengal Regulation VIII of 1819.
119. Notice of sale, and deposit for protection from sale, under Act XI of 1859 or Act VII of 1868.
120. Exemption from personal attendance for registration of certain instruments.
121. Power of co-operative land mortgage bank to receive moneys, etc., notwithstanding assignment or transfer of mortgage deeds to a central co-operative land mortgage bank.
122. Mortgages executed by members of Hindu joint families.

of 1940.]

Section.

CHAPTER XII.

ENFORCEMENT OF OBLIGATIONS AND RECOVERY OF SUMS DUE.

- 123. Access to documents, etc.
- 124. Power to enforce attendance of witness and production of documents.
- 125. Power to direct conditional attachment.
- 126. Power to direct payment of dues.
- 127. Charge and surcharge.
- 128. Penalty for certain misdemeanours.
- 129. Registrar's power to enforce performance of obligations.
- 130. Recovery of sums due.
- 131. Acts of societies, etc., not to be invalidated by certain defects.

CHAPTER XIII.

JURISDICTION, APPEAL AND REVISION.

- 132. Indemnity.
- 133. Bar to jurisdiction of Courts.
- 134. Appeal.
- 135. Review and revision.

CHAPTER XIV.

OFFENCES, PENALTIES AND PROCEDURE.

- 136. Offences and penalties.
- 137. Cognisance of offences.
- 138. Presumption raised by entry in register of members, etc.
- 139. Proof of entries in societies' books.

CHAPTER XV.

RULES.

- 140. Power to make rules.

SCHEDULES.

First Schedule—Enactments repealed.

Second Schedule—Powers exclusively exercisable by the Registrar.

Third Schedule—Recovery of sums due.

Fourth Schedule—Appeals.

Fifth Schedule—Offences and penalties.

Bengal Act XXI of 1940¹

THE BENGAL CO-OPERATIVE SOCIETIES ACT, 1940.

REPEALED IN PART	Ben. Act XVI of 1946.
AMENDED	.. { West Ben. Act XII of 1947. West Ben. Act XXXIII of 1950. West Ben. Act VII of 1953.
ADAPTED	.. { The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. The Adaptation of Laws Order, 1950.

[1st May, 1941.]

An Act to amend the law relating to co-operative societies in Bengal.

WHEREAS it is expedient to make further provision for the formation and working of co-operative societies, and for the promotion of thrift, self-help and mutual aid among persons of moderate means with needs and interests in common, to the end that better conditions of living and better methods of production and business may thereby result, and for that purpose to amend the law relating to co-operative societies in Bengal;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Bengal Co-operative Societies Act, 1940. Short title,
extent and
commence-
ment.

(2) It extends to the whole of ²[West Bengal].

(3) It shall come into force on such date³ as the 'State Government may, by notification in the *Official Gazette*, appoint.

2. In this Act, unless there is anything repugnant in the subject or context—

(a) "arbitrator" means a person appointed under clause (c) of sub-section (1) of section 87 to decide any dispute referred to him ;

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 7th July, 1938, Part IVA., pages 105-106; the Report of the Select Committee, which was published in the *Calcutta Gazette*, dated the 11th January, 1940, Part IVA, page 6, was presented to the Assembly on the 19th December, 1939; for the proceedings of the Assembly, see the proceedings of the meetings of the Bengal Legislative Assembly held on the 3rd August, 1938, 19th December, 1939, and 17th, 18th, 22nd, 23rd, 24th, 25th, 29th, 30th and 31st July and 1st August, 1940; for proceedings of the Council, see the proceedings of the meetings of the Bengal Legislative Council, held on the 12th, 14th, 19th, 27th, 28th and 29th August, 2nd 3rd, 4th, 5th, 9th, 10th, 11th, 12th, 18th and 19th September, 1940.

²The words within square brackets were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³This Act came into force on the 2nd July, 1942, vide Notification No. 1041C.S., dated the 29th June, 1942, published in the *Calcutta Gazette*, dated the 2nd July, 1942, Part I, page 1636.

⁴The word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Chapter I.—Preliminary.—Section 2.)

- (b) "audit officer" means a person authorised under section 76 by general or special order to audit the accounts of a co-operative society ;
- (c) "by-laws" means the by-laws registered or deemed to have been registered under this Act, and includes a registered amendment of the by-laws ;
- (d) "central co-operative land mortgage bank" means a co-operative society, the objects of which include the creation of funds to be lent to co-operative land mortgage banks ;
- (e) "co-operative land mortgage bank" means a co-operative society, the objects of which include the creation of funds to be lent to members on long terms upon mortgage of their immovable property ;
- (f) "co-operative society" means a society registered or deemed to be registered under this Act ;
- (g) "co-operative society with limited liability" means a co-operative society having the liability of its members limited by its by-laws to the amount, if any, unpaid on the shares respectively held by them or to such amount as they may respectively thereby undertake to contribute to the assets of the society in the event of its being wound up ;
- (h) "co-operative society with unlimited liability" means a co-operative society having, subject to its by-laws, an unlimited liability of its members to contribute jointly and severally any deficiency in the assets of the society ;
- (i) "co-operative year" means such period of twelve months as may be prescribed for keeping the accounts of a co-operative society ;
- (j) "dispute" means any matter capable of being the subject of civil litigation, and includes a claim in respect of any sum payable to or by a co-operative society ¹[whether such claim be admitted or not] ;
- (k) "financing bank" means a co-operative society, the objects of which include the creation of funds to be lent to other co-operative societies ;
- (l) "liquidator" means a person appointed under section 90 to wind up the affairs of a co-operative society ;
- (m) "managing committee" means the committee of management of a co-operative society constituted under section 23 ;

¹These words within square brackets were added by section 2 and the First Schedule to the West Bengal Laws (Amendment and Repeal) Act, 1947, (West Ben. Act XII of 1947).

of 1940.]

(Chapter I.—Preliminary.—Sections 3, 4.)

- (n) "member" includes a person joining in an application for registration of a society and a person admitted to membership after registration in accordance with the rules and by-laws ;
- (o) "net profits" means profits after deduction of establishment charges, contingent charges, interest payable on loans and deposits, audit fees and such other sums as may be prescribed ;
- (p) "officer" includes a president, vice-president, chairman, vice-chairman, secretary, assistant secretary, manager, treasurer, member of a managing committee, auditor elected from among the members and any other person empowered under the rules or by-laws to give directions in regard to the business of a co-operative society ;
- (q) "prescribed" means prescribed by rules made under this Act ;
- (r) "Registrar" means a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act ¹[and includes any person appointed to assist the Registrar on whom all or any of the powers or duties of the Registrar referred to in section 10 have been or has been conferred or imposed under clause (a) of that section];
- (s) "rules" means rules for the time being in force made under this Act;
- (t) "Trustee" means the person appointed to be a Trustee under sub-section (1) of section 34.

3. [Repeal]—Rep. by section 3 and the Second Schedule to the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).

II of 1912.

4. (1) Every society existing at the commencement of this Act which has been registered or deemed to have been registered under the Co-operative Societies Act, 1912, shall be deemed to be registered under this Act; and its by-laws shall, in so far as they are not inconsistent with the provisions of this Act, continue in force until altered or rescinded and shall to such extent be deemed to be registered under this Act. Saving of existing societies, etc.

(2) All appointments, rules and orders made, all notifications and notices issued, all transactions entered into and all suits and other proceedings instituted under the Co-operative Societies Act, 1912, shall be deemed, so far as may be, to have been respectively made, issued, entered into or instituted under this Act.

¹These words, brackets, letter and figures within square brackets were added by section 2 and the First Schedule to the West Bengal Laws (Amendment and Repeal) Act, 1947 (West Ben. Act XII of 1947).

[Ben. Act XXI]

(Chapter I.—Preliminary.—Chapter II.—Registration.—Sections 5—9.)

Construct-
tion of
references
to Act II
of 1912.

5. All references to the Co-operative Societies Act, 1912, occurring in any enactment ^{1*} * for the time being in force in ^{II of 1912.} ²[West Bengal] shall, in the application of any such enactment thereto, be construed as references to this Act, and anything done or any proceedings commenced in pursuance of any such enactment on or after the commencement of this Act shall be deemed to have been done or to have been commenced and to have had effect as if the reference in such enactment to the Co-operative Societies Act, 1912, had been a reference to this Act, and no such thing or proceeding shall be deemed to have been invalid on the ground that such enactment did not refer to this Act.

Act VII
of 1913 not
to apply.

6. The provisions of the ^{VII of 1913.} ³Indian Companies Act, 1913, shall not apply to co-operative societies.

Prohibition
of the use
of the
word "co-
operative".

7. No person other than a co-operative society shall trade or carry on business under any name or title of which the word "co-operative" or its vernacular equivalent "samavaya" is part :
Provided that nothing in this section shall apply to the use by any person or by his successor in interest of any name or title under which he lawfully traded or carried on business at the commencement of this Act.

Power to
exempt
co-opera-
tive socie-
ties from
the provi-
sions of
the Act.

8. (1) The ⁴State Government may, by rules—

- (a) exempt any co-operative society or class of such societies from the application of any of the provisions of this Act or of any rules made thereunder, or
- (b) direct that any of such provisions shall apply to such society or class of societies to such extent as may be specified in the rules.

(2) The power to make rules conferred by sub-section (1) shall be subject to the condition that no rule be made to the prejudice of a co-operative society without giving such society an opportunity to represent its case.

CHAPTER II.

REGISTRATION.

Appoint-
ment of
Registrar
and of
persons to
assist him.

9. The ⁴State Government may appoint a person to be Registrar of Co-operative Societies for ⁵[West Bengal] and may appoint persons to assist him.

¹The words "made by any authority in British India and" were omitted by paragraph (1) of Article 3 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

²See foot-note 2 on page 179, *ante*.

³The Indian Companies Act, 1913, was repealed and re-enacted by the Companies Act, 1956 (I of 1956).

⁴See foot-note 4 on page 179, *ante*.

of 1940.]

(Chapter 11.—Registration.—Sections 10—14.)

10. Subject to the rules, the 'State Government may by general or special order in this behalf, confer all or any of the powers [or impose all or any of the duties] entrusted to the Registrar by or under this Act, other than those specified in the Second Schedule,—

Conferment of powers of Registrar.

(a) upon any person appointed under section 9 to assist the Registrar ; and

(b) upon any co-operative society in respect of any other co-operative society which is a member of the co-operative society first mentioned.

11. (1) Subject to the provisions of this Act and of any rules, a society which has as its object the promotion of the common interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operation of such a society, including a society formed by the division of an existing co-operative society or amalgamation of existing co-operative societies, may be registered under this Act with or without limited liability.

Societies which may be registered.

(2) The word "limited" shall be the last word in the name of a society registered under this Act with limited liability.

12. Unless the 'State Government by general or special order otherwise directs, a society shall not be registered under this Act—

Conditions of registration.

(a) with limited liability, if its objects include the creation of funds to be lent to its members, and if—

(i) it has any withdrawable share capital ; or

(ii) the majority of the members are agriculturists and no member is a co-operative society ; or

(b) with unlimited liability, if any member is a co-operative society.

13. An application for registration of a society shall be made to the Registrar in the prescribed manner and shall be accompanied by a copy of the proposed by-laws ; and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Registrar may require.

Applications for registration.

14. The Registrar shall decide all questions as to whether the application complies with the provisions of this Act and the rules and whether the objects of the society are in accordance with section 11.

Registrar to decide certain questions.

¹See foot-note 4 on page 179, *ante*.

²These words within square brackets were inserted by section 2 and the First Schedule to the West Bengal Laws (Amendment and Repeal) Act, 1947 (West Ben. Act XII of 1947).

*(Chapter II.—Registration.—Sections 15—18.)***Registration.**

15. If the Registrar is satisfied that the application complies with the provisions of this Act and the rules and that the proposed by-laws are not contrary thereto, he shall, unless for reasons to be recorded in writing he thinks fit to refuse, register the society and its by-laws.

Evidence of registration.

16. A certificate of registration signed by the Registrar shall be issued to the society and shall be conclusive evidence that the co-operative society therein mentioned is a co-operative society duly registered under this Act and that its by-laws are as attached to the certificate, unless it is proved that the registration of the society has been cancelled or that the by-laws have been amended in accordance with section 17 or section 18.

Amendment of by-laws of a co-operative society.

17. (1) No amendment of any by-law of a co-operative society, whether by way of addition, cancellation or alteration, shall be valid until such amendment has been registered under this Act.

(2) Every proposal for such amendment, framed in accordance with the rules, shall be forwarded to the Registrar; and if the Registrar is satisfied that the proposed amendment is not contrary to the provisions of the Act or the rules he shall, unless for reasons to be recorded in writing he sees fit to refuse, register the amendment.

(3) The Registrar shall forward to the society a copy of the amendment thus registered, together with a certificate signed by him; and such certificate shall be conclusive evidence that the amendment has been duly registered.

Power of financing bank to direct amendment of by-laws.

18. (1) Subject to the rules, if it appears to a financing bank that an amendment of the by-laws of a co-operative society which is a member and a debtor of such bank is necessary or desirable in the interests of such society, it may, in the prescribed manner, call upon the society to make the amendment within such time as it may specify.

(2) If the society fails to make the amendment within the time specified, the financing bank may, after affording the society an opportunity of being heard, forward to the Registrar the amendment which it considers necessary or desirable, and the Registrar, if satisfied that the amendment is not contrary to the provisions of the Act or the rules, may thereupon register the amendment and forward to the society in the prescribed manner a copy thereof, together with a certificate signed by him which shall be conclusive evidence that the amendment has been registered; and such amendment shall thereupon be binding upon the society and its members.

of 1940.]

(Chapter III.—*Status and Management of Co-operative Societies.*—
Sections 19—22.)

CHAPTER III.

STATUS AND MANAGEMENT OF CO-OPERATIVE SOCIETIES.

19. The registration of a co-operative society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it was constituted.

Co-operative societies to be bodies corporate.

20. (1) The final authority of every co-operative society shall vest in the general body of members in general meeting :

Final authority of a co-operative society.

Provided that, in such circumstances as may be prescribed, the final authority may vest in the delegates of such members, elected in the prescribed manner and assembled in general meeting.

(2) The general meeting shall be summoned and shall exercise its authority in such manner as may be prescribed.

21. (1) A general meeting of every co-operative society shall be held once at least in every co-operative year for the purpose of—

Annual general meeting.

(a) electing members of the managing committee and such other officers as may be provided in the by-laws,

(b) considering the audit report referred to in section 79, and

(c) considering any other matter which may be brought forward in accordance with the by-laws.

(2) Such meeting shall be held not more than fifteen months after the date of the last preceding meeting held under sub-section (1) and, unless the Registrar on special grounds extends the period, within three months of the date prescribed for the receipt by the co-operative society of the audit report referred to in section 79 :

Provided that the Registrar may, if he thinks fit, permit such meeting to be held not more than eighteen months after the date of the last preceding meeting held under sub-section (1).

22. (1) A special general meeting may be called at any time by a majority of the members of the managing committee and shall be called—

Special general meeting.

(a) on the requisition in writing of one-third of the members of any co-operative society having not more than five hundred members or of one-fifth of the members of any other society; or

*(Chapter III.—Status and Management of Co-operative Societies.—
Sections 23—25.)*

(b) at the instance of the Registrar:

Provided that, in the case of any society having more than two thousand five hundred members, a requisition under clause (a) may be presented by delegates elected in the prescribed manner.

(2) The Registrar, or any person authorised by him in this behalf by special order in writing, may call a general meeting of a co-operative society at any time, and shall call such a meeting upon failure of the society to call a meeting on a requisition by the members or at the instance of the Registrar under sub-section (1).

(3) Notwithstanding any rule or by-law prescribing the period of notice for, and the method of summoning, a general meeting, the Registrar, in the case of a meeting called at his instance under sub-section (1), or the person calling the meeting in the case of a meeting called under sub-section (2), may specify the time and place for the meeting, the manner in which it shall be summoned and the matter which shall be discussed thereat.

Managing
committee.

23. The management of every co-operative society shall vest in a managing committee constituted in accordance with the rules and by-laws, which shall exercise such powers and perform such duties as may be conferred or imposed respectively by this Act, the rules and the by-laws.

Power to
depute
servant of
the
Govern-
ment to
manage
affairs of
a co-opera-
tive
society.

24. The ¹State Government may, on the application of a co-operative society and on such conditions as may be prescribed, depute a servant of the ²Government to the service of the society for the purpose of managing its affairs, and a servant of the ³Government so deputed shall exercise such powers and perform such duties as may be prescribed.

Dissolution
and
reconstitu-
tion of
managing
committee.

25. (1) If the Registrar, after an inspection under section 82 or an inquiry under section 84, is satisfied for reasons to be recorded by him in writing that the managing committee of a co-operative society is mismanaging its affairs, he may, under clause (b) of sub-section (1) of section 22, direct that, within such time as he may determine, a special general meeting of the society shall be held to dissolve and reconstitute the managing committee.

(2) In any direction made under sub-section (1) the Registrar may, for reasons to be recorded by him in writing, order that all or any of the members of the outgoing committee shall, for such period not exceeding three years as he may determine, be disqualified for election or appointment as an officer of the society.

¹See footnote 4 on page 179, ante.

²The word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1940.]

(Chapter III.—Status and Management of Co-operative Societies.—
Chapter IV.—Duties and Obligations of Co-operative Societies.—
Sections 26—29.)

26. (1) If the managing committee is not dissolved and reconstituted within the time determined, and in such manner as may be directed, by the Registrar under section 25, he may by order dissolve the managing committee, the members of which shall forthwith vacate their office; and the Registrar shall thereupon appoint one or more suitable persons, on such conditions as may be prescribed, to manage the affairs of the co-operative society for such period not exceeding one year, and to arrange for the constitution of a new managing committee by such date, as the Registrar may determine :

Dissolu-
tion of
managing
committee
and
appoint-
ment of
person to
manage
affairs
of co-
operative
society.

Provided that the State Government may extend the period of one year for such further period not exceeding two years as it may think fit.

(2) An order under sub-section (1) shall be in writing, shall set forth the reasons for which it is passed, and shall be passed only after an opportunity has been given to the managing committee to state its objections thereto.

27. A person appointed under section 26 shall hold office until the managing committee is reconstituted or his appointment is cancelled by the Registrar.

Tenure of
office of
person
appointed
under
section 26.

28. During the tenure of office of a person appointed under section 26—

- (a) all properties of the co-operative society shall vest in the Registrar; and
- (b) subject to the control of the Registrar, and notwithstanding the preferring of any appeal under section 134, such person shall exercise all the powers and perform all the duties which may under this Act, the rules and the by-laws, be exercised or performed by the managing committee or any officer of the society.

Manage-
ment of
co-opera-
tive
society on
dissolution
of its
committee.

CHAPTER IV.

DUTIES AND OBLIGATIONS OF CO-OPERATIVE SOCIETIES.

29. Every co-operative society shall have an address, registered in accordance with the rules, to which all notices and communications may be sent, and shall send notice in writing of every change thereof, within thirty days of such change, to the Registrar and to the financing bank, if any, of which it is a member.

Address of
co-opera-
tive
society.

[Ben. Act XXI]

*(Chapter IV.—Duties and Obligations of Co-operative Societies.—
Sections 30—34.)*

Copy of
Act, etc.,
to be open
to inspection.

30. Every co-operative society shall keep open to inspection free of charge at all reasonable times at the address of the society—

- (a) a copy of this Act ;
- (b) a copy of the rules ;
- (c) a copy of the by-laws of the society ;
- (d) a register of members ; and
- (e) such other documents as may be prescribed.

Publica-
tion of
annual
balance
sheet.

31. The balance sheet authenticated by the audit officer shall be annually published by every co-operative society in the prescribed manner.

Restrictions on
borrowing.

32. A co-operative society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by the rules or by-laws ; and shall in respect of such deposits or loans make such provision for the maintenance of fluid resource as may be prescribed.

Power of
State
Govern-
ment to
guarantee
principal
and
interest of
debentures.

33. (1) In the case of any debentures or of any class or series or issue of debentures issued under this Act, the ¹State Government shall—

- (a) guarantee the principal thereof and the interest thereon, subject to such maximum amount of principal or such rate of interest and to such other conditions as may be prescribed ; and
- (b) notwithstanding anything contained in the Indian Trusts Act, 1882, declare that such debentures shall be deemed to be included among the securities enumerated in section 20 of the said Act.

II of 1882.

(2) Such debentures shall not be issued save with the express authority of the ¹State Government.

Issue of
guaran-
teed
debentures.

34. (1) When a co-operative society is authorised under the provisions of sub-section (2) of section 33 to receive loans by the issue of debentures, the principal of and interest on which is so guaranteed, the ¹State Government shall appoint the Registrar or some other person to be the Trustee for the purpose of securing the fulfilment of the obligations of the society to the holders of the debentures.

(2) With the previous sanction of the Trustee and subject to such conditions as he may impose, a co-operative society may issue debentures of one or more denominations for such period as it may deem expedient on the security of the assets of the society, including any mortgages which it holds by acceptance, assignment or transfer.

¹See footnote 4 on page 179, ante.

*(Chapter IV.—Duties and Obligations of Co-operative Societies.—
Sections 35—37.)*

(3) Such debentures may be issued subject to either or both of the following conditions, namely :—

- (a) fixing a period, not exceeding thirty years from the date of issue, during which they shall be irredeemable,
- (b) reserving to the society the right to call in at any time any previously issued debentures in advance of the date fixed for redemption, after giving to the debenture-holder concerned not less than three months' notice in writing,

and may be subject also to any other conditions imposed by the Trustee.

(4) The total amount payable in respect of debentures issued by a society (including any debentures issued before the commencement of this Act) and outstanding at any time shall not exceed the total amount due on the mortgages, the amounts paid thereunder and remaining in the hands of the society or of the Trustee at such time and the value of all other assets of the society held by transfer or assignment subsisting at that time.

(5) Where a co-operative society has called in any debenture in advance of the date fixed for redemption, the society shall, subject to the previous permission of the Trustee, have the power to cancel the debenture and issue any new debenture in place of the debenture paid off or otherwise satisfied or extinguished, or to reissue the debenture either by reissuing the same debenture or by issuing another debenture in its place ; and by virtue of such reissue the person entitled to such debenture shall have, and shall be deemed to have always had, the same rights and priorities, if any, as if the debenture had not been previously issued.

35. The Trustee appointed under section 34 shall be a corporation sole by the name of the Trustee for the debentures in respect of which he is appointed, and as such shall have perpetual succession and a common seal and in his corporate name shall sue and be sued.

Trustee to be a corporation sole.

36. (1) The powers and functions of the Trustee shall be governed by the provisions of this Act and the instrument of trust executed between the co-operative society and the Trustee.

Powers and functions of Trustee.

(2) The form of such instrument, and any modification which the parties thereto may mutually agree to make in any of its terms after its execution, shall be subject to the previous approval of the State Government.

37. Upon the issue of debentures under the provisions of sub-section (2) of section 34, the assets of the co-operative society, including any mortgages which it holds by acceptance, assignment or transfer, shall vest in the Trustee and the holders of debentures

Debenture-holders' charge on assets.

¹See footnote 4 on page 179, *ante*.

*(Chapter IV.—Duties and Obligations of Co-operative Societies.—
Chapter V.—Privileges of Co-operative Societies.—Sections
38—42.)*

shall have a floating charge on all such assets, including the amounts paid under such mortgages and remaining in the hands of the Trustee or the society, and on the properties of the society.

Power of
State
Govern-
ment to
give
financial
assistance.

38. Notwithstanding anything contained in any other law for the time being in force, the State Government may, subject to the rules grant loans to, take shares in, or give financial assistance in any other form to any co-operative society.

Restric-
tions on
lending.

39. (1) A co-operative society shall not make loans—

- (a) to any person other than a member ; or
- (b) to a member in excess either of the maximum or of the normal credit determined by the society for that member in accordance with the rules, whichever may be prescribed ; or
- (c) save with the special sanction of the Registrar given in accordance with the rules, on the security of movable property.

(2) The State Government may, by general or special order, after giving any society likely to be affected thereby an opportunity of being heard in such manner as may be prescribed, prohibit or restrict the lending of money on mortgage of immovable property by any society or class of societies other than a co-operative land mortgage bank.

Restric-
tions on
other
transac-
tions with
non-mem-
bers.

40. Save as provided in sections 32 to 39 inclusive, 48 and 49, the transactions of a co-operative society with persons other than members shall be subject to such prohibitions and restrictions, if any, as may be prescribed.

Liability
to furnish
informa-
tion.

41. Every officer and every member of a co-operative society shall furnish such information in regard to the transactions or working of the society as may be required of him by the Registrar or an audit officer, arbitrator, liquidator or any person conducting an inspection or inquiry under Chapter VIII.

CHAPTER V.

PRIVILEGES OF CO-OPERATIVE SOCIETIES.

Change of
name and
its effect.

42. (1) With the previous approval of the Registrar, a co-operative society may, by a resolution passed at a general meeting, change its name.

¹See footnote 4 on page 179, ante.

of 1940.]

(Chapter V.—Privileges of Co-operative Societies.—Sections 43—45.)

(2) Such change of name shall not affect any right or obligation of the society or of any of its members, or past members, or of the estate of any of its deceased members ; and any legal proceedings pending on the date of such change in which such society is a party may be continued by or against the society under its new name.

43. (1) Subject to the provisions of this Act and of the rules, a co-operative society, with the previous approval of the Registrar, may, by a resolution passed at a general meeting, change its form of liability. Change of liability.

(2) When such a resolution has been passed, the society shall give notice thereof in writing in the prescribed manner to all its members and creditors and, notwithstanding any by-law or contract to the contrary, any member or creditor shall, within six months of the service of the notice upon him, have the option of withdrawing his shares, deposits or loans. Any member or creditor who does not exercise his option within the period aforesaid shall be deemed to have assented to the change.

(3) The change shall not take effect until either—

- (a) the assent thereto of all members and creditors has been secured ; or
- (b) all claims of members and creditors who exercise the option referred to in sub-section (2) have been met in full.

44. (1) When a member of a co-operative society which includes among its objects the advance of loans to its members applies for a loan or when a person applies for membership of such a society, the society may in the prescribed manner serve a notice on any creditor named in the application or ascertained after subsequent inquiry, and may also publish a general notice on all creditors, requiring him or them, in the prescribed form and within the time specified in the notice, to furnish a written statement of his or their claim. Co-operative society's power to call for statement of claims.

(2) When a member of a co-operative society which includes among its objects the advance of loans to its members intends to apply for a loan from any person other than the society, such member shall send to the society a notice in writing stating—

- (a) his intention to apply for such loan,
- (b) the amount of the loan for which he intends to apply, and
- (c) the object of taking the loan.

45. A co-operative society which includes amongst its objects the advance of loans to its members, and the financing bank, if any, of which such society is a member, may by a notice served in the prescribed manner upon the landlord of any member of such society require the landlord to furnish to such society or the financing bank or both notice of any rent suit instituted by him against such member. Co-operative society's power to call for notice of rent suit.

(*Chapter V.—Privileges of Co-operative Societies.—Sections 46, 47.*)

Limitation.

46. Notwithstanding any of the provisions of the Indian Limitation Act, 1908, the period of limitation for the institution of a suit to recover any sum, including interest thereon, due to a co-operative society by a member thereof shall be computed from the date on which such member dies or ceases to be a member of the society.

IX of 1908.

Debts due to co-operative societies to be a first charge.

47. (1) Notwithstanding anything contained in sections 60 and 61 of the Code of Civil Procedure, 1908, or in the Bengal Tenancy Act, 1885, but subject to any claim of the State Government in respect of land revenue, or any sum recoverable as land revenue or as a public demand, or of a landlord in respect of rent or any sum recoverable as rent, any debt or outstanding demand due to a co-operative society by any member, past member or the estate of any deceased member shall be a first charge—

**Act V of 1908.
VIII of 1885.**

- (a) if such debt or demand is due in respect of the supply of, or any loan to provide the means of paying for seed, manure, labour, subsistence, fodder for cattle or any other thing incidental to the conduct of agricultural operations,—upon the crops or agricultural produce of such member, past member or belonging to the estate of such deceased member, at any time within two years from the date on which the last instalment of such supply or loan became repayable ;
- (b) if such debt or demand is due in respect of the supply of, or of any loan to provide the means of paying for, irrigation facilities,—upon the crops or agricultural produce of such member, past member or belonging to the estate of such deceased member, at any time within two years from the date on which the last instalment of such supply or loan became repayable or upon the crops or agricultural produce of the land so provided with irrigation facilities;
- (c) if such debt or demand is due in respect of the supply of, or any loan for the purchase of cattle, agricultural implements or warehouses for the storage of agricultural produce—in the manner and to the extent aforesaid upon the crops or agricultural produce of such member, past member or belonging to the estate of such deceased member and also upon the cattle, agricultural implements or warehouses thus supplied or purchased wholly or in part from any such loan ;
- (d) if such debt or demand is due in respect of the supply of, or any loan for the purchase of raw materials, industrial implements, machinery, workshops, warehouses or business premises,—upon the raw material or other things supplied or purchased by such member, past member or

¹See footnote 4 on page 179, *ante*.

of 1940.]

(Chapter V.—Privileges of Co-operative Societies.—Sections 48, 49.)

deceased member wholly or in part from any such loan and also upon any articles manufactured from raw materials or with implements or machinery so supplied or purchased wholly or in part from any such loan ;

(e) if such debt or demand is due in respect of any loan for the purchase or redemption of land, upon the land purchased or redeemed by such member, past member or deceased member from any such loan ; and

(f) if such debt or demand is due in respect of any loan for the purchase or construction of any house or building or any portion thereof or in respect of the supply of materials for such construction,—upon the house or building so purchased or constructed by such member, past member or deceased member from any such loan or material.

(2) Nothing in clauses (a), (c), (d), (e) or (f) of sub-section (1) shall affect the claims of any *bona fide* purchaser or transferee for value without notice of any such crops or other agricultural produce, fodder, cattle, agricultural or industrial implements, machinery, raw materials, workshops, warehouses, premises, manufactured articles, houses, buildings or land.

48. (1) A co-operative society, an object of which is the provision of irrigational facilities to the cultivable land of its members, may in the prescribed form apply to the Collector for demarcation of the area irrigable from any source of irrigation other than a tank which has, under section 4 of the Bengal Tanks Improvement Act, 1939, been declared to be a derelict tank.

Levy of water rate on non-members.

(2) Such area shall be termed the “irrigable area”.

(3) On receipt of such application, the Collector shall, after giving notice in the prescribed manner, cause to be prepared, in the prescribed form, by an officer subordinate to him, a map of the irrigable area and a statement of the cultivable lands included therein ; and such map and statement shall be published in the prescribed manner.

(4) If the lands possessed by the members of such society comprise not less than sixty *per centum* of the cultivable lands included in the irrigable area, such society may, subject to rules made in this behalf, levy a water rate upon any non-member of the society possessing within such area cultivable land which is benefited by the irrigational facilities referred to in sub-section (1).

(5) Such water rate shall be recoverable in the manner provided in this Act for the recovery of sums due to the society by the members, past members and deceased members thereof.

49. (1) A co-operative society, an object of which is the provision of embankment protection facilities to the lands of its members, may in the prescribed form apply to the Collector for demarcation of the area protected by any embankment.

Levy of embankment protection rate on non-members.

(Chapter V.—Privileges of Co-operative Societies.—Sections 50, 51.)

(2) Such area shall be termed the “protected area.”

(3) On receipt of such application, the Collector shall, after giving notice in the prescribed manner, cause to be prepared in the prescribed form, by an officer subordinate to him, a map of the protected area and a statement of the lands included therein; and a copy of such map and statement shall be published in the prescribed manner.

(4) If the lands possessed by the members of such society comprise not less than sixty *per centum* of the lands included in the protected area, such society may, subject to rules made in this behalf, levy an embankment protection rate upon any non-member of the society possessing land within such area.

(5) Such embankment protection rate shall be recoverable in the manner provided in this Act for the recovery of sums due to the society by the members, past members and deceased members thereof.

Charge
and set off
in respect
of share or
interest
of
members.

50. A co-operative society shall have a charge upon the share or interest in the capital and the deposits of a member or a past or deceased member and upon any amount payable out of profits to a member or past member or the estate of a deceased member in respect of any debt due from such member or past member or the estate of such deceased member to the society and may, subject to the provisions of sections 69 to 73 inclusive and of the rules and by-laws, set off any sum credited or payable to a member, past member or the estate of a deceased member in or towards the payment of any such debt.

Deduction
of dues to
co-opera-
tive
societies
from
salaries of
members.

51. If a member of a co-operative society, who is in the employment of the Government or of any local authority or of any other person, takes a loan from a co-operative society in terms of a written contract, providing that the loan is to be repaid by instalments and that the society shall be entitled to recover such instalments from his salary, the person who disburses any amount payable to such member as salary in respect of such employment shall, on demand from the society, deduct the amount of such instalment from the amount disbursed to such member as salary as often as is necessary until the loan is repaid and shall after any such deduction is made forthwith remit to the society the amount so deducted :

Provided that nothing in this section shall apply to persons employed upon railways within the meaning of the Constitution or in mines or oil fields.

¹This new section 51 was substituted for the original section by section 2 of the Bengal Co-operative Societies (Amendment) Act, 1953 (West Ben. Act VII of 1953).

of 1940.]

(Chapter V.—Privileges of Co-operative Societies.—Sections 52, 53.)

XVI of
1908.

52. Nothing in clauses (b) and (c) of sub-section (1) of section 17 of the Indian Registration Act, 1908 shall apply to—

Exemption from compulsory registration of instruments relating to shares and debentures of co-operative society.

- (a) any instrument relating to shares in a co-operative society, notwithstanding that the assets of such society consist wholly or in part of immovable property ; or
- (b) any debenture issued by any such society and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immovable property, except in so far as it entitles the holder to the security afforded by a registered instrument whereby the society has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures ; or
- (c) any endorsement upon or transfer of any debenture issued by any such society.

53. (1) The ¹State Government may by general or special order in the case of any co-operative society or class of co-operative societies remit any tax, cess or fee payable under any law for the time being in force or the rules framed thereunder in respect of which the ¹State Government is competent to remit such tax, cess or fee.

Power to remit certain duties, fees, etc.

(2) In respect of any co-operative society or class of co-operative societies the ¹State Government may, by notification in the *Official Gazette*, remit—

- (a) the stamp duty (other than stamp duties falling within ²[entry 91 or entry 96 in List I in the Seventh Schedule to the Constitution]) in respect of any instrument executed by, or on behalf of, or in favour of, a co-operative society or by an officer or on behalf of a member thereof and relating to the business of such society, in cases where, but for such remission, the co-operative society, officer or member thereof, as the case may be, would be liable to pay the stamp duty chargeable under any law for the time being in force in respect of such instrument, and
- (b) any fee payable by a co-operative society under any law for the time being in force for the registration of documents.

¹See footnote 4 on page 179, *ante*.

²These words and figures within square brackets were substituted for the words and figures "item 57 or item 59 in List I in the Seventh Schedule to the Government of India Act, 1935", by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

(Chapter V.—Privileges of Co-operative Societies—Chapter VI.—
Property and Funds of Co-operative Societies.—Sections
54—56.)

Power of
Registrar
to sanction
a com-
promise
between a
co-opera-
tive
society
and its
creditors.

54. (1) Notwithstanding anything contained in this Act, where a compromise or arrangement is proposed between a co-operative society and its creditor or creditors or any class of them the Registrar, upon an application made in the prescribed manner by the society or by any creditor or, in the case of a society in respect of which an order has been passed for the winding up thereof, by the liquidator, may order a meeting of the creditors or the class of creditors, as the case may be, to be called, held and conducted in such manner as may be prescribed.

(2) If a majority in number of the creditors or the class of creditors, as the case may be, representing claims to three-fourths of the debts due by the society to the creditors or the class of creditors, present either in person or by proxy at the meeting agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Registrar, upon publication in the prescribed manner, be binding on all the creditors or the class of creditors, as the case may be, and also on the society or, in the case of a society in respect of which an order has been passed for the winding up thereof, on the liquidator and on all persons who have been or may be required by the liquidator under section 91 to contribute to the assets of the society.

CHAPTER VI.

PROPERTY AND FUNDS OF CO-OPERATIVE SOCIETIES.

Invest-
ment of
funds.

55. A co-operative society may invest or deposit its funds—

- (a) in a Government Savings Bank; or
- (b) in any of the securities specified in section 20 of the Indian Trusts Act, 1882; or
- (c) with the sanction of the Registrar, in the shares or debentures or on the security of any other co-operative society with limited liability; or
- (d) in any other manner prescribed.

II of 1882.

Reserve
Fund.

56. (1) Every co-operative society shall maintain a reserve fund in respect of the profits, if any, derivable from its transactions.

(2) Of the net profits of a co-operative society in each year there shall be carried to the reserve fund not less than twenty-five *per centum* or such higher proportion as may be prescribed for such society or class of societies.

(3) Save to the extent that, and in such manner as, may be prescribed no part of its reserve fund shall be used in the business of a co-operative society.

of 1940.]

**(Chapter VI.—Property and Funds of Co-operative Societies.—
Sections 57, 58.)**

(4) Subject to the rules, any portion of the reserve fund not used in the business of the society, shall be invested or deposited—

(a) in the Government Savings Bank; or

II of 1882.

(b) in any of the securities specified in section ¹[20] of the Indian Trusts Act, 1882, other than those specified in clause (c) of that section; or

(c) in any other bank approved by the Registrar.

57. (1) Save as may be prescribed, no distribution of profits shall be made in the case of a co-operative society with unlimited liability; and save as provided in this section, no part of the funds of a co-operative society shall be divided by way of dividend or bonus or otherwise among its members. Distribu-
tion of
profits.

(2) No dividend or bonus shall be paid—

(a) otherwise than out of profits certified by the audit officer to have been actually realised; or

(b) without the previous sanction of the Registrar, if the audit officer reports that any asset is bad or doubtful and also recommends that such sanction is necessary:

Provided that the audit officer shall not so recommend if such asset is adequately covered.

(3) Subject to the provisions of sub-section (2), after the proportion required by sub-section (2) of section 56 has been carried to the reserve fund from the net profits of any year, the balance of such profits, together with undistributed profits of past years if any, may, to such extent and under such conditions as may be prescribed, be distributed as dividend among the members or paid as bonus or remuneration to a member or employee for any specific service rendered to the society.

(4) No contribution under section 58 shall be paid otherwise than out of profit actually realised.

58. After there has been carried to the reserve fund the proportion of the net profits of any year required by sub-section (2) of section 56, a co-operative society— Contribu-
tion to
charitable
purposes.

(a) shall, in the manner prescribed, contribute an amount not exceeding five *per centum* of the balance of the year's remaining net profits for co-operative education or for such other co-operative purpose as may be prescribed, and

¹The figures within square brackets were substituted for the figures "29" by section 2 of, and the First Schedule to, the West Bengal Laws (Amendment and Repeal) Act, 1947 (West. Ben. Act XII of 1947),

[Ben. Act XXI]

(Chapter VI.—*Property and Funds of Co-operative Societies.*—
Chapter VII.—*Privileges, Liabilities and Obligations of Members of Co-operative Societies.*—Sections 59—62.)

(b) may in accordance with the rules contribute not more than ten per centum of such balance for any charitable purpose as defined in section 2 of the Charitable Endowments Act, 1890.

VI of 1890.

Provident fund.

59. (1) A co-operative society may establish a provident fund for its members, officers or servants from the contributions of such members, officers or servants, as the case may be, and, after there has been carried to the reserve fund the proportion of net profits in any year required by sub-section (2) of section 56 and after there has been paid the contribution required by clause (a) of section 58, may make such contribution to the provident fund as may be provided for in the rules or by-laws.

(2) Such provident fund shall not be used in the business of the society, but shall be invested or deposited in one or more of the ways specified in sub-section (4) of section 56.

CHAPTER VII.

PRIVILEGES, LIABILITIES AND OBLIGATIONS OF MEMBERS OF CO-OPERATIVE SOCIETIES.

Votes of members.

60. (1) Subject to the rules relating to voting by delegates, no member of a co-operative society shall have more than one vote in its affairs:

Provided that in the case of an equality of votes the chairman shall have a second or casting vote.

(2) A co-operative society which is a member of another co-operative society may appoint one of its members not disqualified for such appointment under any rule or by-law to vote in the affairs of such other society.

Members not to exercise rights till due payment made.

61. No member of a co-operative society shall exercise the rights of a member until he has made such payment to the society in respect of membership or acquired such interest in the society as may be provided for in the rules or by-laws.

Members to furnish information as to their financial position and alienation of their immovable property.

62. (1) A full, true and accurate statement of his assets and liabilities shall be furnished—

(a) by an applicant for membership of a co-operative society with unlimited liability, together with his application;

(b) by a member of a co-operative society with unlimited liability when required to do so by the Registrar or any person authorised by him by a general or special order or by the financing bank; and

of 1940.]

(Chapter VII.—Privileges, Liabilities and Obligations of Members of Co-operative Societies.—Sections 63—67.)

- (c) by a member of any other society, together with any application for a loan or for acceptance as a surety.

(2) A member of a co-operative society, shall, before the completion of each such transaction, furnish to the society of which he is a member full, true and accurate information regarding any sale, mortgage or transfer in any form whatsoever of his immovable property or any portion or share thereof and regarding any debt proposed to be incurred on the security of such property.

63. A loan advanced by a co-operative society to a member thereof shall be utilised by him for the purpose for which it was advanced and, if not so utilised, shall be refunded by him immediately on its recall, in the prescribed manner, by the society.

Loans to be used for the object for which advanced.

64. Notwithstanding anything contained in any law for the time being in force, but subject to the provisions of section 50, the share or interest of a member in the capital of a co-operative society or in any provident fund established under section 59 shall not be liable to attachment or sale under any decree or order of a court in respect of any debt or liability incurred by such member, and neither the Official Assignee under the Presidency-towns Insolvency Act, 1909, nor a receiver under the Provincial Insolvency Act, 1920, shall be entitled to or have any claim on such share or interest.

Share or interest not liable to attachment.

III of
1909.
V of 1920.

65. The members of a co-operative society shall, upon the winding up of the society, be jointly and severally liable to contribute towards any deficiency in the assets of the society—

Liability of members.

- (a) in the case of a society with unlimited liability, without limit; and

- (b) in the case of a society with limited liability, subject to such limitation of amount as may be provided in the by-laws.

66. The liability of a past member and of the estate of a deceased member for the debts of a co-operative society as they existed at the date of his ceasing to be a member or of his death, as the case may be, shall continue for a period of two years from the said date.

Liability of past member and of estate of deceased member.

67. Where the liability of a member of a co-operative society is limited by shares, no member other than another co-operative society shall—

Restrictions on interest of members of society with limited liability and share capital.

- (a) hold more than such portion of the share capital of the society as, subject to a maximum of one-fifth, may be prescribed; or

- (b) have or claim any interest in the shares of the society exceeding one thousand rupees.

(Chapter VII.—Privileges, Liabilities and Obligations of Members of Co-operative Societies.—Sections 68—70.)

Restric-
tions
on trans-
fer of share
or interest.

68. (1) The transfer or charge of the share or interest of a member in the capital of a co-operative society shall be subject to the provisions of this Act and to such conditions as to maximum holding as may be prescribed and, in the case of a member of a society with limited liability, shall require the approval of the society.

(2) No transfer or charge of his share or interest by a member of a society registered with unlimited liability shall be valid unless—

- (a) he has held such share or interest (save in the case of transfers under any of the provisions of sections 69, 70, 71, 73 or 74) for not less than one year; and
- (b) the transferee or mortgagee is either a member of such society or a person whose application for membership has been accepted or another co-operative society.

Nomina-
tion of
trans-
feree.

69. If the by-laws of a co-operative society so permit, any member of the society may, in accordance with the rules, nominate a person in whose favour the society shall dispose of the share or interest of such member on his death.

Disposal of
deceased
member's
share or
interest.

70. (1) When any member of a co-operative society dies his share and interest in the society shall, subject to the provisions of sections 50 and 68 and to the further provisions of this section, be transferred—

- (a) to the person, if any, nominated in accordance with the provisions of section 69; or
- (b) if there be no such nominee or, if the existence and residence of such nominee cannot be ascertained by the managing committee, or if for any other cause such transfer cannot be made without unreasonable delay, to the person who (subject to the production by him of probate, letters of administration or succession certificate) appears to the managing committee to be entitled in accordance with the rules to possession of such share or interest as part of the estate of the deceased member; or
- (c) on the application of the person referred to in clause (b) within three months of the death of the deceased member, to any person specified in the application.

(2) If the share or interest of the deceased cannot be legally transferred in accordance with the provisions of sub-section (1), or if the person to whom the share or interest is payable under that sub-section within one year of the death of the deceased member claims payment of the value of such share or interest, or if the society in accordance with the rules and by-laws decides to proceed according to this sub-section—

- (a) the share shall be transferred to some other person qualified in accordance with the provisions of section 68 to be the transferee of the share, on receipt from such person of the value thereof; and

[1940.]

(Chapter VII.—Privileges, Liabilities and Obligations of Members of Co-operative Societies.—Sections 71, 72.)

- (b) the value of the share or interest of the deceased member determined in accordance with the rules, shall be paid to the person nominated in accordance with the provisions of section 69 or to the person appearing to be entitled to possession of such share or interest as aforesaid, after deducting the amount of any sum payable under this Act to the society from the estate of the deceased member.

71. When a member of a co-operative society is expelled or resigns in accordance with the rules or the by-laws, or when a member becomes insane—

Disposal of share or interest of expelled, resigned or insane member.

- (a) his share or interest shall be transferred to another person qualified to be the transferee in accordance with the provisions of section 68, and the value thereof determined in accordance with the rules shall be paid to such member or, if he is insane, to any person appointed to manage his properties under the Indian Lunacy Act, 1912; or

IV of 1912.

- (b) in the case of a society with unlimited liability, if the by-laws so provide, the value of his share or interest determined in accordance with the rules shall be paid to him or, if he is insane, to any person appointed to manage his properties under the Indian Lunacy Act, 1912.

72. Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force—

Restriction on transfer of possession of and interest in land held under a co-operative society.

- (1) a member of a co-operative society, the object of which is the reclamation and colonization of land or the acquisition of land and the leasing thereof to its members, shall not be entitled to transfer his possession of or interest in any land held by him under the society, except to the society or, with the previous approval of the society given in accordance with its by-laws, to a member thereof;

- (2) when the membership of a member of a co-operative society specified in clause (1) terminates by reason of his death, expulsion, resignation or insanity or any other cause, his possession of and interest in any land held by him under the society shall vest in his heir, executor or administrator or in the person, if any, nominated by him under section 69, if such heir, executor, administrator or person is willing to become a member of the society and is eligible for membership in accordance with the by-laws of the society;

- (3) if the heir, executor, administrator or person referred to in clause (2) does not become a member of the co-operative society, the possession of and interest in the

(Chapter VII.—Privileges, Liabilities and Obligations of Members of Co-operative Societies.—Sections 73, 74.)

land of the deceased, expelled, resigned or insane member shall vest in the society, which shall pay to such heir, executor, administrator or person, as the case may be, a sum equivalent to the value of the land as determined in accordance with the rules; and

- (4) no land held under a co-operative society specified in clause (1) by a member thereof, or vested under clause (2) in the heir, executor or administrator of such member or in any person nominated by such member under section 69 shall be attachable in any suit or proceeding for the recovery of any debt other than a debt due to the society or to a member thereof.

Disposal of share or interest of a member of a wound up co-operative society.

73. When an order is passed for the winding up of a co-operative society which is a member of a co-operative society with limited liability, the share or interest of the society being wound up shall, subject to the provisions of section 68, be transferred to another person or co-operative society upon receipt from such person or society of the value, determined in accordance with the rules, of such share or interest; and upon the application of the liquidator the value thereof thus received shall be paid to him:

¹[Provided that where the transfer of such share or interest is not possible within a reasonable date on which the order directing the winding up of the society takes effect, the value, determined in accordance with the rules, of such share or interest, may, with the previous approval of the Registrar, be set off by the liquidator against any sum which is due by the society being wound up, to the co-operative society with limited liability of which such society is a member.]

Disposal of moneys due to a deceased, expelled, resigned or insane member.

74. All sums calculated in accordance with the rules to be due from a co-operative society to a member, other than payments in respect of the share or interest of such member to the society, shall, subject to the provisions of section 50, be paid—

- (a) in the case of a deceased member, to the person to whom the share and interest are transferred or their value is paid in accordance with the provisions of section 70;
- (b) in the case of a member who has been expelled or has resigned from a society, to him; and
- (c) in the case of a member who has become insane, to any person appointed to manage his properties under the Indian Lunacy Act, 1912.

IV of 1912.

¹This proviso to s. 73 was added by s. 2 of the Bengal Co-operative Societies (West Bengal Amendment) Act, 1950 (West Ben. Act XXXIII of 1950). (This amending Act came into force on the 8th June, 1950, vide notification No. 725 Co-op., dated the 5th June, 1950, published in the *Calcutta Gazette* of 1950, Pt. I, page 1099).

of 1940.]

(Chapter VII.—Privileges, Liabilities and Obligations of Members of Co-operative Societies.—Chapter VIII.—Audit, Inspection and Inquiry.—Sections 75—78.)

75. All payments and transfers made by a co-operative society in accordance with the provisions of sections 70 to 74 inclusive shall be valid and effectual against any demand made upon the society by any other person.

Bar to certain claims.

CHAPTER VIII.

AUDIT, INSPECTION AND INQUIRY.

76. (1) The accounts of every co-operative society shall, at least once in each year and by such date as may be prescribed, be audited by the Registrar or by an audit officer authorised by him in this behalf by general or special order in writing.

Registrar to be responsible for audit.

(2) In respect of every audit of its accounts a co-operative society shall, in the manner prescribed, pay such audit fee as may be prescribed.

77. If at the time of audit the accounts of a co-operative society are not complete, the Registrar or, with his approval, the audit officer may cause the accounts to be written up at the expense of the society.

Power to the Registrar to have the accounts written up.

78. (1) The audit under section 76 shall include—

Nature of audit.

- (a) a verification of the cash balances and securities;
- (b) a verification of the balance at the credit of the depositors and creditors and of the amounts due from the debtors of the society;
- (c) an examination of overdue debts, if any;
- (d) a valuation of the assets and liabilities of the society;
- (e) an examination of the transactions, including the monetary transactions of the society within such limits as may be prescribed;
- (f) an examination of the statement of accounts to be prepared by the managing committee in such form as may be prescribed;
- (g) a certification of the realised profits; and
- (h) any other matter that may be prescribed.

(2) The statement of accounts thus audited, together with the modifications, if any, made therein by the Registrar, shall be final and binding on the co-operative society.

(Chapter VIII.—Audit, Inspection and Inquiry.—Sections 79—82.)

Audit
officer's
report.

79. The audit officer shall, by such date as may be prescribed, submit to the co-operative society and to the Registrar, together with the statement of accounts audited, an audit report including a statement of—

- (a) every transaction which appears to him to be contrary to law or to the rules or by-laws;
- (b) every sum which ought to have been but has not been brought into account;
- (c) the amount of any deficiency or loss which appears to have resulted from any negligence or misconduct or to require further investigation;
- (d) any money or property belonging to the society which appears to have been misappropriated or fraudulently retained by any person;
- (e) any of the assets which appears to him to be bad or doubtful; and
- (f) any other matter prescribed.

Rectifica-
tion of
defects.

80. A co-operative society shall be afforded by the Registrar an opportunity of explaining any defects or irregularities pointed out by the audit officer, and thereafter the society shall, within such time and in such manner as the Registrar may direct, remedy such defects and irregularities and report to the Registrar the action taken by it thereon.

Constitu-
tion of an
authority
to super-
vise work-
ing of co-
operative
societies.

81. (1) The ¹State Government may constitute an authority to appoint and control in such manner as may be prescribed, the staff required for the supervision of co-operative societies, other than such staff as may be appointed by the ¹State Government for the purposes of such supervision, and such authority shall be composed of such number of persons and shall perform such other functions as may be prescribed:

Provided that, of the persons composing such authority, three-fourths shall be elected by co-operative societies in such manner as may be prescribed, and one-fourth shall be nominated by the Registrar in such manner as may be prescribed.

(2) A co-operative society shall be liable to pay, to an authority constituted under sub-section (1), such fee, in such manner, as may be prescribed.

Inspection
by Regis-
trar or
financing
bank.

82. (1) Every co-operative society shall be liable at any time to inspection—

- (a) by the Registrar or any person authorised by him in this behalf by general or special order; and
- (b) by the financing bank, if any, of which it is a member.

¹See foot-note 4 on page 179, ante.

of 1940.]

(Chapter VIII.—Audit, Inspection and Inquiry.—Sections 83, 84.)

(2) An inspection under this section by a financing bank shall be made by an officer of the bank or by a member of its paid staff certified by the Registrar in accordance with the rules as competent to conduct such an inspection.

(3) The result of an inspection under this section shall be communicated to the society and to the financing bank, if any, of which it is a member and, when the inspection is made by a financing bank, to the Registrar if so required by him.

83. (1) Subject to the provisions of sub-section (2), on the application of a creditor of a co-operative society, an inspection shall be made of the books of the society by the Registrar or by a person authorised by him in this behalf by general or special order in writing.

Inspection
of books
of an
indebted
co-opera-
tive
society.

(2) No such inspection shall be made unless—

(a) the Registrar, after giving the society an opportunity of being heard, is satisfied that the alleged debt is a sum then due, and that the creditor has demanded payment thereof and has not received satisfaction within a reasonable time; and

(b) the creditor deposits with the Registrar such sum as security for the costs of the inspection as the Registrar may direct.

(3) The Registrar shall communicate the result of any inspection under this section to the creditor, to the society and to the financing bank, if any, of which the society is a member.

84. (1) The Registrar may, at any time, of his own motion or at the request of the District Magistrate, hold, by himself or by a person authorised by him by order in writing, an inquiry into the constitution, working and financial condition of a co-operative society.

Inquiry by
Registrar.

(2) Such an inquiry shall be held on the application of—

(a) the financing bank, if any, of which the society is a member;

(b) a majority of the members of the managing committee of the society ;

(c) one-third of the members of the society, each of whom has been a member of the society for not less than twelve months immediately preceding the date of the application and shall have deposited such security for costs, if any, as the Registrar may direct ;

(d) creditors representing not less than one-half of the borrowed capital of the society, who shall have deposited such security for costs, if any, as the Registrar may direct:

Provided that, in the case of any society having more than two thousand five hundred members, an application under clause (c) may be presented by delegates elected in the prescribed manner.

*(Chapter VIII.—Audit, Inspection and Inquiry.—Chapter IX.—
Settlement of Disputes.—Sections 85—87.)*

(3) The Registrar shall communicate the result of any inquiry under this section to the society, to the financing bank, if any, of which the society is a member, and to the District Magistrate or the creditors, as the case may be, who applied for the inquiry.

Costs of
inspection
or inquiry.

85. (1) The Registrar may, after giving the parties an opportunity of being heard and by an order in writing stating the reasons therefor, apportion the costs of an inspection made under section 83 or of an inquiry held under section 84 or such portion of the costs as he thinks fit, between the co-operative society, the members thereof or the financing bank or the creditor or creditors applying for such inspection or inquiry, as the case may be, and the officers, former officers, members and past members of the society.

(2) No expenditure from the funds of any co-operative society shall be incurred for the purpose of defraying any costs in support of any appeal preferred by any person other than the society against an order under sub-section (1).

CHAPTER IX.

SETTLEMENT OF DISPUTES.

Disputes
to be
referred to
Registrar.

86. Any dispute touching the business of a co-operative society (other than a dispute regarding disciplinary action taken by a society or its managing committee against a paid servant of the society) or of the liquidator of a society shall be referred to the Registrar if the parties thereto are among the following, namely:—

- (a) the society, its managing committee, any past or present officer, agent or servant or the liquidator of the society; or
- (b) a member, past member or person claiming through a member, past member or deceased member of the society; or
- (c) a surety of a member, past member or deceased member of the society, whether such surety is or is not a member of the society; or
- (d) any other co-operative society or the liquidator of such society.

Settlement
of disputes.

87. (1) On receipt of a reference under section 86 the Registrar shall, subject to the rules—

- (a) decide the dispute himself; or
- (b) transfer it for disposal to any person authorised by the State Government to exercise the powers of the Registrar in this behalf; or

¹See foot-note 4 on page 179, ante.

of 1940.]

(Chapter IX.—Settlement of Disputes.—Chapter X.—Winding up and Dissolution of Co-operative Societies.—Sections 88, 89.)

(c) refer it for disposal to one or more arbitrators to be appointed by the Registrar.

(2) Subject to the rules, the Registrar may withdraw any reference transferred or referred under sub-section (1) and may deal with it himself in the manner provided in such rules.

88. Where a dispute involves property pledged as collateral security, the person deciding the dispute may issue an award, which shall have the same force and effect as a final mortgage decree of a Civil Court having jurisdiction to make such a decree.

Force and effect of certain awards.

CHAPTER X.

WINDING UP AND DISSOLUTION OF CO-OPERATIVE SOCIETIES.

89. (1) The Registrar may, and if the rules in any case so prescribe shall, by an order in writing, direct that a co-operative society shall be wound up if—

Order for the winding up of a co-operative society.

- (a) after an inspection has been made under section 82 or section 83 or an inquiry has been held under section 84; or
- (b) on an application made upon a resolution carried by three-fourths of the members of the society present at a special general meeting called for the purpose ; or
- (c) on his own motion in the case of a society which—
 - (i) has not commenced working ; or
 - (ii) has ceased working; or
 - (iii) has share capital or members' deposits not exceeding five hundred rupees ; or
 - (iv) has ceased to comply with any condition as to registration in this Act or in the rules or by-laws,

he is of the opinion that the society ought to be wound up.

(2) A copy of such order shall be communicated, in the prescribed manner, to the society and to the financing bank, if any, of which the society is a member.

(3) The order shall take effect—

- (a) where no appeal is preferred under section 134, on the expiry of the time allowed for preferring an appeal; or
- (b) where an appeal is preferred, upon rejection of the appeal by the appellate authority.

*(Chapter X.—Winding up and Dissolution of Co-operative Societies.
—Sections 90, 91.)*

**Appoint-
ment of a
liquidator.**

90. When an order is passed under section 89 for the winding up of a co-operative society, the Registrar may, in accordance with the rules, appoint a person to be liquidator of the society and may remove such person and appoint another in his place.

**Powers of a
liquidator.**

91. (1) Notwithstanding anything contained in section 89 relating to the date on which an order for winding up a co-operative society shall take effect, a liquidator appointed under section 90 shall have power from the date of his appointment to take immediate possession of all assets, properties, effects and actionable claims of the society or to which the society is entitled and of all books, records and other documents pertaining to the business of the society.

(2) From the date on which the order directing the winding up of the society takes effect the liquidator shall, subject to the rules and under the general direction and control of the Registrar, have power, so far as is necessary for the winding up of the society, on behalf of the society to carry on the business thereof and to do all acts and execute all documents necessary to such winding up, and in particular shall exercise such of the following powers as the Registrar may from time to time direct, namely,—

- (a) to institute and defend suits and other legal proceedings;
- (b) to make any compromise or arrangement with any person between whom and the society there exists any dispute and to refer any such dispute to arbitration;
- (c) to determine the debts due to the society by a member, past member or the estate, nominees, heirs or legal representatives of a deceased member;
- (d) to calculate the costs of liquidation and to determine by what persons and in what proportions they are to be borne;
- (e) to determine from time to time the contributions, including the items mentioned in clauses (c) and (d), to be made to the assets of the society by the members, past members or estates, nominees, heirs and legal representatives of deceased members or by the past or present officers of the society;
- (f) to investigate all claims against the society and, subject to the provisions of this Act, to decide questions of priority arising between claimants;
- (g) to pay claims against the society (including interest up to the date of the order for the winding up thereof) according to their priority, in full or rateably as the assets of the society permit;
- (h) to give such directions as appear to him to be necessary in regard to the realisation, collection and distribution of the assets of the society; and

of 1940.]

(Chapter X.—*Winding up and Dissolution of Co-operative Societies.*
—Chapter XI.—*Special Provisions for Co-operative Land Mortgage Banks.*—Sections 92—95.)

(i) after consulting the members of the society, to dispose of the surplus, if any, remaining after paying the claims against the society.

III of 1909. V of 1920. **92.** Notwithstanding anything contained in the Presidency-towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920, the contribution assessed by a liquidator shall rank next to debts due to the [Government] or to any local authority in order of priority in insolvency proceeding.

Priority of contributions assessed by liquidator.

93. When the affairs of a co-operative society have been wound up, the liquidator shall deposit the records of the society in the prescribed manner and shall make a report to the Registrar.

Liquidator to deposit the books and submit a final report.

94. (1) The Registrar may cancel an order for the winding up of a co-operative society in any case where, in his opinion, the society should continue to exist.

Power of Registrar to cancel order of winding up or of registration of a co-operative society.

(2) In any other case the Registrar shall, after considering the report of the liquidator, if any, order the registration of the society to be cancelled.

CHAPTER XI.

SPECIAL PROVISIONS FOR CO-OPERATIVE LAND MORTGAGE BANKS.

IV of 1882. **95.** (1) When a mortgage is executed in favour of a co-operative land mortgage bank for payment of a prior debt or part thereof of the mortgagor, the bank shall, notwithstanding the provisions of sections 83 and 84 of the Transfer of Property Act, 1882, by issuing notice in writing in the prescribed manner require any person to whom any such debt is due to receive payment of such debt or part thereof from the bank within such period as may be specified in the notice.

Right of co-operative land mortgage bank to pay prior debts of mortgagor.

(2) The person on whom such notice is served shall be bound to receive payment of the amount offered by the bank; but where there is a disagreement between the mortgagor and such person as regards the amount of the debt, or where the bank tenders less than the agreed amount of the debt, the receipt of the sum offered by the bank shall not prejudice the right, if any, of such person to recover the balance claimed by him.

¹See foot-note 2 on page 186, ante.

[Ben. Act XXI]

(Chapter XI.—Special Provisions for Co-operative Land Mortgage Banks.—Sections 96—99.)

(3) If any person fails to accept such notice or to receive such payment, such debt or part thereof, as the case may be, shall cease to carry interest from the expiry of the period specified in the notice.

Restriction
on mort-
gagor's
transfer of
or charge
on equity
of redemp-
tion.

96. Notwithstanding anything contained in any other law for the time being in force—

(1) the mortgagor of property [mortgaged to a co-operative land mortgage bank shall not be entitled, after the execution of the mortgage and without the concurrence of the bank,—

(a) to transfer or mortgage his equity of redemption, or

(b) to create a charge upon such property for a period exceeding five years;

(2) the co-operative land mortgage bank shall not be entitled to give its concurrence under clause (1) without the previous sanction of the central co-operative land mortgage bank or the financing bank to which any sum is payable by it; and

(3) the central co-operative land mortgage bank or the financing bank shall, if it accords its sanction under clause (2), send an intimation thereof to the Trustee, if any, appointed under section 34.

Mortgage
not to be
questioned
on insol-
vency of
mortgagor.

97. Notwithstanding anything contained in the Presidency- III of 1909.
towns Insolvency Act, 1909, or the Provincial Insolvency Act, V of 1920.
1920, a mortgage executed in favour of a co-operative land mortgage bank shall not be called in question on the ground that it was not executed in good faith for valuable consideration, or on the ground that it was executed in order to give the bank a preference over the other creditors of the mortgagor.

Priority of
mortgage
over
claims
arising
under Act
XIX of
1883.

98. A mortgage executed in favour of a co-operative land mortgage bank after the commencement of this Act shall have priority over any claim of the State Government arising from a loan under the Land Improvement Loans Act, 1883, granted after the execution of the mortgage. XIX of 1883.

Power to
distrain.

99. (1) If any sum due as an instalment or part of an instalment payable under a mortgage in favour of a co-operative land mortgage bank has remained unpaid for more than one month from the date on which it fell due, the bank may, in addition to any other remedy available to it, apply to the Registrar for the recovery of such sum by distraint and sale of not more than half the produce of the mortgaged land, including the standing crops thereon.

of 1940.]

(Chapter XI.—Special Provisions for Co-operative Land Mortgage Banks.—Sections 100—103.)

IV of 1882. (2) Upon receipt of such application, and notwithstanding anything contained in the Transfer of Property Act, 1882, the Registrar may, subject to the provisions of this Act and the rules, take such action as is necessary to distrain and sell such produce.

(3) No distraint shall be made under this section after the expiry of twelve months from the date on which the instalment fell due.

100. The proceeds of any distraint and sale under section 99 shall be applied as follows:—

Distribution of proceeds of sale or distraint.

First, there shall be paid to the co-operative land mortgage bank at the prescribed rate—

(a) the costs of the sale; and

(b) the other expenses incurred on account of the distraint;

Secondly, there shall be paid to the bank the amount for which the distraint was made and there shall be given to the person whose property has been sold a receipt for the amount so paid; and

Thirdly, the residue, if any, thereafter remaining shall be delivered to the person whose property has been sold.

101. Notwithstanding anything contained in any other law for the time being in force, where a power of sale without the intervention of the Court is expressly conferred on a co-operative land mortgage bank by a mortgage deed in favour of the bank, if any instalment under such mortgage is not paid in full on the date on which it falls due, the managing committee of the bank shall, in addition to any other remedy available to it, have the power, subject to the provisions of this Act and the rules, to bring the mortgaged property to sale without the intervention of the Court.

Power to bring mortgaged property to sale without the intervention of the Court.

102. The Registrar may, subject to the rules, appoint a Sale Officer for the purpose of conducting any sale under the provisions of this Chapter.

Appointment of Sale Officer.

103. A co-operative land mortgage bank in the exercise of the powers conferred by section 101 shall, in the prescribed manner and in the form of a written demand for the payment of the amount due to the bank, issue a notice upon—

Notice requiring payment from persons interested.

(a) the mortgagor;

(b) any person who has any interest in or charge upon the property mortgaged or in or upon the right to redeem the said property and who has previously notified the bank in writing of such interest or charge;

(c) any surety for the payment of the mortgage debt or any part thereof; and

(d) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property.

(Chapter XI.—Special Provisions for Co-operative Land Mortgage Banks.—Sections 104—107.)

Applica-
tion for
sale and
method of
sale.

104. Upon the expiry of three months from the date of service of a notice under section 103, if the sum due under the mortgage has not been paid, the bank may, after considering any objection made within that period by any person entitled to such notice, apply to the Sale Officer appointed under section 102 to sell the mortgaged property or any part thereof and such officer shall, in the prescribed manner, proceed to sell such property by public auction and report the result thereof to the bank.

Applica-
tion to set
aside a sale
on deposit.

105. When property mortgaged to a co-operative land mortgage bank has been sold under the provisions of this Chapter, the mortgagor or any person entitled to a notice under section 103 may within the prescribed period apply to the managing committee of the bank to have the sale set aside upon his depositing with the bank—

- (a) for payment to the bank, the amount specified in the proclamation of sale together with the subsequent interest and the costs, if any, incurred by the bank in bringing the property to sale; and
- (b) for payment to the purchaser as compensation, a sum equal to five *per centum* of the purchase money.

Setting
aside and
confirma-
tion of
sales.

106. (1) After the expiry of the period prescribed for making an application to have the sale set aside, the bank shall, in the prescribed manner, submit to the Registrar a report setting forth the proceedings of the Sale Officer, the result of the sale and details of any application made under section 105.

(2) Upon receipt of such report the Registrar shall—

- (a) if an application has been made under section 105 and if the amounts specified in that section have been deposited by the applicant, make an order setting aside the sale and requiring the bank to pay to the purchaser the sum deposited under clause (b) of section 105; and
- (b) if no application has been made under section 105 or an application has been made but the amount specified in that section has not been deposited by the applicant, or an application has been disallowed by the bank, make an order confirming the sale.

(3) Where an order confirming a sale is made under sub-section (2), the sale shall thereupon become absolute.

Distribu-
tion of
sale-
proceeds
and bar to
certain
claims.

107. (1) The Registrar shall, in making a sale absolute by an order under section 106, direct that the sale-proceeds shall be applied as follows:—

First, there shall be paid to the co-operative land mortgage bank, at the prescribed rate, all costs, charges and expenses properly incurred by the bank or the Sale Officer incidental to the sale or any attempted sale;

of 1940.]

(Chapter XI.—Special Provisions for Co-operative Land Mortgage Banks.—Sections 108, 109.)

Secondly, there shall be paid to the bank all interest due on account of the mortgage in consequence whereof the mortgaged property was sold;

Thirdly, there shall be paid to the bank all sums due as principal on account of the mortgage; and

Fourthly, the residue, if any, thereafter remaining shall be paid to the mortgagor.

(2) All payments of such residue made in accordance with sub-section (1) shall be valid and effectual against any demand relating thereto made upon the bank by the mortgagor or by any other person.

108. (1) Where a sale of mortgaged property under this Chapter has become absolute, the Registrar shall grant to the purchaser a certificate in the prescribed form specifying the property sold and the name of the person who, at the time of the sale, is declared to be the purchaser, and such certificate shall bear the date of the day on which the sale becomes absolute.

Certificate to be issued to purchaser and to be entered by the registering officer.

XVI of
1908.

(2) Notwithstanding anything contained in the Indian Registration Act, 1908, the Registrar shall send a copy of every certificate granted under sub-section (1) to the registering officer appointed under that Act within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in such certificate is situated, and such registering officer shall enter the contents of such copy in his register of non-testamentary documents relating to immovable property.

VIII of
1885.

(3) The purchaser of any mortgaged property sold under this Chapter shall supply to the Registrar notices in the prescribed form for service on the landlord of such property together with such fee as may be prescribed for the service of such notices and the landlord's fee, if any, required under the Bengal Tenancy Act, 1885; and the Registrar shall thereupon, in the prescribed manner, cause such notices to be served on, and such landlord's fee to be transmitted to, the landlord named in such notices.

109. Where a certificate has been issued under section 108, the Court shall, on the application of the purchaser, order delivery of possession to be made to him in the prescribed manner.

Delivery of property to purchaser.

Explanation.—In this section “Court” means the Civil Court which would have jurisdiction to entertain a suit to enforce the mortgage and within the limits of whose jurisdiction the property sold is situated.

(Chapter XI.—Special Provisions for Co-operative Land Mortgage Banks.—Sections 110—114.)

Right of co-operative land mortgage bank or central co-operative land mortgage bank to purchase at a sale under this Chapter.

110. It shall be competent to a co-operative land mortgage bank or central co-operative land mortgage bank to purchase the mortgaged property sold under this Chapter, but the property so purchased shall be disposed of by such bank by sale within the period prescribed or, where a Trustee has been appointed, within such period as he may specify in accordance with the rules.

Title of purchaser not to be questioned.

111. When a sale has been made in exercise of a power to sell under section 101 and has been confirmed under clause (b) of sub-section (2) of section 106, the title of the purchaser shall not be questioned in any Court by the mortgagor or his successor in interest.

Power to appoint a receiver.

112. (1) In circumstances in which the power of sale under section 101 might be exercised, the Registrar may, subject to the provisions of sub-section (2), and in accordance with the rules—

- (a) on the application of a co-operative land mortgage bank, appoint a receiver of the produce and income of the mortgaged property;
- (b) on the application of the mortgagor for due cause shown, remove a receiver so appointed; and
- (c) fill up a vacancy in the office of receiver.

(2) The Registrar shall not appoint a receiver where the mortgaged property is already in the possession of a receiver appointed by a Court.

Expenses, remuneration and duties of a receiver.

113. (1) A receiver appointed under section 112 shall be entitled, in accordance with the rules, to receive such expenses of management and remuneration, if any, as may be determined by the Registrar in consultation with the co-operative land mortgage bank.

(2) The provisions of sub-section (8) of section 69A of the Transfer of Property Act, 1882, shall apply to a receiver appointed under section 112. **IV of 1882.**

Powers of co-operative land mortgage bank if the mortgaged property is destroyed or the security is rendered insufficient.

114. Where any property mortgaged to a co-operative land mortgage bank is wholly or partially destroyed or the security is rendered insufficient and the mortgagor, after reasonable opportunity given by the bank to provide such further security as will render the whole security sufficient to repay such portion of the loan as may be determined by the bank, has failed so to do, the whole of the loan shall be deemed to fall due at once and the bank shall, subject to the rules, be entitled to take action against the mortgagor for the recovery thereof under this Chapter.

of 1940.]

(Chapter XI.—Special Provisions for Co-operative Land Mortgage Banks.—Sections 115—118.)

Explanation.—A security shall be deemed to be insufficient within the meaning of this section if the value of the mortgaged property does not exceed the amount for the time being due on the mortgage by such proportion as may be specified in the rules or by-laws.

115. (1) A Trustee and, in the case of a member society a central co-operative land mortgage bank may, in accordance with the rules, direct a co-operative land mortgage bank to take action against a defaulter under section 99, section 101 or section 114 and, if the bank neglects or fails to do so, may take such action.

Power of the Trustee and a central co-operative land mortgage bank to direct or take certain action.

(2) Where such action is taken by a Trustee or a central co-operative land mortgage bank, the provisions of this Act and of any rules or by-laws shall apply in respect thereto as if all references to the co-operative land mortgage bank were references to the Trustee or the central co-operative land mortgage bank, as the case may be.

116. At any sale of movable or immovable property held under the provisions of this Chapter no officer of a co-operative land mortgage bank or central co-operative land mortgage bank (except on behalf of the bank of which he is an officer), and no Sale Officer or other person having any duty to perform in connection with such sale, shall either directly or indirectly bid for or acquire or attempt to acquire any interest in such property.

Officers of co-operative land mortgage and central co-operative land mortgage banks and Sale Officers not to bid at sales.

VIII of 1885.

117. Notwithstanding anything contained in Chapter XIV of the Bengal Tenancy Act, 1885, relating to the sale of tenures and holdings in execution of decrees for arrears of rent, no such sale held under the provisions of that Chapter shall affect the title or interest of any co-operative land mortgage bank which has, in respect of such tenure or holding, a registered and notified encumbrance within the meaning of clause (b) of section 161 of the said Act, unless a concise statement of the order of attachment and proclamation of sale has, in the prescribed manner and at the time of the issue of such proclamation, been sent by the Court by registered post to such co-operative land mortgage bank.

Notice of sale under Chapter XIV of Act VIII of 1885.

Ben. Reg. VIII of 1819.

118. Notwithstanding anything contained in the Bengal Patni Taluks Regulation, 1819 (hereafter in this section referred to as the said Regulation)—

Notice of sale, and deposit for protection from sale, under Bengal Regulation VIII of 1819.

(1) when a mortgage is executed in favour of a co-operative land mortgage bank in respect of any *patni taluk* to which the said Regulation applies or any tenure or holding comprised within such *patni taluk*, the co-operative land mortgage bank shall—

(a) in such manner as may be prescribed, notify the Zemindar of the execution of such mortgage,

[Ben. Act XXI]

(Chapter XI.—Special Provisions for Co-operative Land Mortgage Banks—Section 119.)

- (b) for the purpose of receiving notice of the sale of such *patni taluk* or tenure as the case may be, pay to the Zemindar such fee in such manner as may be prescribed, and
 - (c) on compliance with the provisions of sub-clauses (a) and (b), be deemed to be a notified mortgagee in respect of such *patni taluk* or tenure ;
- (2) before the sale is held of any such *patni taluk* or tenure under the said Regulation, the Zemindar shall, by registered post, send a notice thereof to every co-operative land mortgage bank which is, in respect of such *patni taluk* or tenure, a notified mortgagee within the meaning of sub-clause (c) of clause (1) ; and
- (3) any co-operative land mortgage bank which is a notified mortgagee within the meaning of sub-clause (c) of clause (1) shall be entitled to stay such sale by depositing with the Collector the balance of the arrears of rent due in respect of such *patni taluk* or tenure.

Notice of sale, and deposit for protection from sale under Act XI of 1859 or Act VII of 1868.

119. Notwithstanding anything contained in the Bengal Land-revenue Sales Act, 1859, or the Bengal Land-revenue Sales Act, 1868 (hereafter in this section referred to respectively as the said Act of 1859 and the said Act of 1868)—

XI of 1859.
Ben. Act
VII of
1868.

- (1) when a mortgage is executed in favour of a co-operative land mortgage bank in respect of any revenue-paying estate to which the said Act of 1859 applies or any tenure or holding comprised within such estate, or any revenue-paying tenure to which the said Act of 1868 applies or any tenure or holding comprised within such tenure, the co-operative land mortgage bank shall—
 - (a) in such manner as may be prescribed, notify the Collector of the execution of such mortgage,
 - (b) for the purpose of receiving notice of the sale of such estate or tenure as the case may be, pay to the Collector such fee in such manner as may be prescribed, and
 - (c) on compliance with the provisions of sub-clauses (a) and (b), be deemed to be a notified mortgagee in respect of such estate or tenure as the case may be;
- (2) before the sale is held of any such estate under the said Act of 1859, or of any such tenure under the said Act of 1868, the Collector shall, by registered post, send a notice thereof to every co-operative land mortgage bank which is, in respect of such estate or tenure as the case may be, a notified mortgagee within the meaning of sub-clause (c) of clause (1); and

of 1940.]

(Chapter XI.—Special Provisions for Co-operative Land Mortgage Banks.—Sections 120—122.)

- (3) any co-operative land mortgage bank which is a notified mortgagee within the meaning of sub-clause (c) of clause (1) shall be entitled to stay such sale by depositing with the Collector the balance of the arrears of land-revenue due in respect of such estate or tenure as the case may be.

XVI of
1908.

120. (1) Notwithstanding anything contained in the Indian Registration Act, 1908, it shall not be necessary for a Trustee or for any officer of a co-operative land mortgage bank or central co-operative land mortgage bank to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity or to sign as provided in section 58 of that Act.

Exemption from personal attendance for registration of certain instruments.

(2) Where any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he thinks fit, refer to the Trustee or to such officer for any information respecting the same and on being satisfied of the execution thereof shall register the instrument.

121. Notwithstanding any assignment or transfer of any mortgage by a co-operative land mortgage bank to a central co-operative land mortgage bank—

- (a) all moneys due under the mortgage shall, in the absence of any specific direction to the contrary issued by the Registrar or a Trustee in accordance with the rules and communicated to the mortgagor, be payable to the co-operative land mortgage bank and such payment shall be as valid as if the mortgage had not been so assigned or transferred ; and
- (b) the co-operative land mortgage bank shall, in the absence of any such direction communicated to it, be entitled to sue on the mortgage or take any other proceeding for the recovery of the moneys due under the mortgage.

Power of co-operative land mortgage bank to receive moneys, etc., notwithstanding assignment or transfer of mortgage deeds to a central co-operative land mortgage bank.

122. (1) Where a mortgage executed in favour of a co-operative land mortgage bank, whether before or after the commencement of this Act, is called in question on the ground that it was executed by the manager of a joint Hindu family for a purpose not binding on the members thereof whether major or minor, the burden of proof shall, notwithstanding anything contained in any other law for the time being in force, rest upon the party which calls such mortgage in question.

Mortgages executed by members of Hindu joint families.

(2) For the purpose of this section the following shall be regarded as purposes binding on the members of a joint Hindu family—

- (a) the improvement of agricultural land or of the methods of cultivation, and
- (b) the purchase of land.

[Ben. Act XXI]

(Chapter XII.—Enforcement of Obligations and Recovery of Sums due.—Sections 123—125.)

CHAPTER XII.

ENFORCEMENT OF OBLIGATIONS AND RECOVERY OF SUMS DUE.

Access to documents, etc.

123. The Registrar and, subject to any restrictions prescribed, an audit officer, arbitrator or any person conducting an inspection or inquiry under Chapter VIII, shall at all reasonable times have free access to the books, accounts, documents, securities, cash and other properties belonging to or in the custody of a co-operative society.

Power to enforce attendance of witness and production of documents.

124. The Registrar and, subject to any restrictions prescribed, an audit officer, arbitrator or liquidator, or any person conducting an inspection or inquiry under Chapter VIII, shall, in so far as is necessary for carrying out any of the purposes of this Act, have power to summon and enforce the attendance of witnesses and parties concerned and to examine them upon oath and to compel the production of any books, accounts, documents, securities, cash and other properties by the same means and, so far as may be, in the same manner as provided in the Code of Civil Procedure, 1908.

Act V of 1908.

Power to direct conditional attachment.

125. (1) Subject to the rules, the Registrar, if it appears to him that any person or co-operative society with intent to defeat or delay the execution of any order that may be passed under Chapters IX, X, XI or XII—

- (a) is about to dispose of the whole or any part of his or its property; or
- (b) is about to remove the whole or any part of his or its property from the local limits of the jurisdiction of the Registrar,

¹[may, by an order in writing, direct such person or co-operative society, within a time to be fixed by him, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Registrar, when required, the said property or the value of the same, or such portion thereof as may be considered sufficient by the Registrar, or to show cause why he or it should not furnish such security. The Registrar may also in the order direct the conditional attachment of the said property or such portion thereof as he thinks fit.]

(2) Such attachment shall have the same force and effect as if it had been made by a Civil Court and shall continue in force until withdrawn or cancelled by the Registrar.

¹These words within square brackets were substituted for the words "may, unless such security is furnished as he may require, direct the conditional attachment of the said property or such part thereof as he thinks fit" by section 3 of the Bengal Co-operative Societies (Amendment) Act, 1953 (West Bengal Act VII of 1953).

of 1940.

(Chapter XII.—Enforcement of Obligations and Recovery of Sums due.—Sections 126—128.)

126. Notwithstanding anything contained in Chapter IX, the Registrar or such other person as may be prescribed may, on his own motion or on the written requisition of a co-operative society or financing bank for the recovery of any loan due by a defaulting member, after due inquiry, make an award directing payment by such member of the amount found to be due.

Power to direct payment of dues.

127. (1) Where, as the result of an audit under section 76 or an inspection under section 82 or section 83, or an inquiry under section 84 or a report made in the course of the winding up of a co-operative society, it appears to the Registrar that any past or present officer, has at any time after the commencement of this Act and within a period of four years prior to the date of such audit, inspection, inquiry or report, as the case may be—

Charge and surcharge.

- (a) intentionally made or authorised any payment which is contrary to the provisions of this Act or to the rules or by-laws; or
- (b) by reason of his culpable negligence in respect of any prescribed matter involved the society in any loss or deficiency ; or
- (c) failed to bring into account any sum which ought to have been brought into account ; or
- (d) misappropriated or fraudulently retained any property of the society ;

the Registrar may inquire into the conduct of such officer.

(2) Upon such inquiry, after giving such officer an opportunity to be heard and, in the case of a payment made contrary to the provisions of this Act or the rules or by-laws, after affording such officer an opportunity to recover the amount of such payment from the payee and credit it to the funds of the society, the Registrar may, subject to the rules, by an order in writing require such officer to pay such sum to the assets of the society by way of compensation in respect of such payment or loss or sum, or to restore such property as the Registrar thinks fit, and to pay such sum as the Registrar may fix to meet the cost of the proceedings under this section.

(3) This section shall apply notwithstanding that such officer may by his act or omission have incurred criminal liability under this Act or any other law for the time being in force.

128. Where it appears to the Registrar that any person has contravened the provisions of this Act, the rules or by-laws—

Penalty for certain misde-meanours.

- (a) by sitting or voting as a member of a managing committee, or voting in the affairs of a co-operative society as a representative of another society which is a member of such society, or exercising the rights of a member of a co-operative society, when such person was not entitled so to sit or vote or exercise such rights, as the case may be, or

(Chapter XII.—Enforcement of Obligations and Recovery of Sums due.—Sections 129, 130.)

- (b) by employing a loan for a purpose different from that for which it was granted,

the Registrar may, subject to the rules and after affording such person an opportunity to be heard, by an order in writing direct him to pay to the assets of the society by way of penalty such sum as the Registrar thinks fit in respect of every such contravention.

Registrar's
power to
enforce
perfor-
mance of
obliga-
tions.

129. Notwithstanding anything contained in this Act, where any co-operative society is required to take any action under this Act, the rules or the by-laws and such action is not taken—

- (a) within the time provided in this Act, the rules or the by-laws ; or
- (b) where no time is so provided, within such time, having regard to the nature and extent of the action to be taken, as the Registrar may specify by a notice in writing,

the Registrar may call upon any officer of the society whom, in accordance with such principles as may be prescribed, he considers to be responsible for the carrying out of his directions and, after giving such officer an opportunity to be heard, may require him to pay to the assets of the society such sum not exceeding twenty-five rupees as the Registrar may think fit for each day until the Registrar's directions are carried out.

Recovery
of sums
due.

130. Any sum payable to the State Government or to a co-operative society or the authority constituted under section 81 in accordance with any order, decision or award under this Act shall be recoverable in the manner provided in the Third Schedule:

Provided that, notwithstanding anything contained in the Code of Civil Procedure, 1908, or in any other law for the time being in force, any sum payable in accordance with an award made under section 126 in respect of default in the payment of a loan taken under section 51 or of any instalment of such loan, shall be recoverable— Act V of 1908.

- (a) if the salary of the member exceeds thirty rupees *per mensem*, by the attachment of such salary to the extent of the instalment in respect of which default has been made or of half the difference between such salary and thirty rupees, whichever is less, and
- (b) if the salary of the member does not exceed thirty rupees *per mensem*, by the attachment of such salary to the extent of the instalment in respect of which default has been made or of one anna in every rupee of such salary, whichever is less.

of 1940.]

(Chapter XII.—Enforcement of Obligations and Recovery of Sums due.—Chapter XIII.—Jurisdiction, Appeal and Revision.—Sections 131—134.)

131. (1) No act of a co-operative society or managing committee or of any officer or liquidator done in good faith in pursuance of the business of the society shall be deemed to be invalid by reason only of some defect subsequently discovered in the organisation of the society or in the constitution of the managing committee or in the appointment or election of the officer or liquidator or on the ground that such officer or liquidator was disqualified for his appointment.

Acts of societies, etc., not to be invalidated by certain defects.

(2) No act done in good faith by any person appointed under this Act shall be invalid merely by reason of the fact that his appointment has been cancelled by or in consequence of any order subsequently passed under this Act.

(3) The Registrar shall decide whether any act was done in good faith in pursuance of the business of a society.

CHAPTER XIII.

JURISDICTION, APPEAL AND REVISION.

132. No suit, prosecution or legal proceedings whatever shall lie against the Registrar or any person subordinate to him or acting on his authority or against a Trustee in respect of anything in good faith done or purporting to be done under this Act.

Indemnity.

133. (1) Save as provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of—

Bar to jurisdiction of Courts.

- (a) the registration of a co-operative society or its by-laws or of an amendment of its by-laws ; or
- (b) the dissolution of a managing committee and the management of the society on dissolution thereof; or
- (c) any dispute required under section 86 to be referred to the Registrar; or
- (d) any matter concerned with the winding up and dissolution of a co-operative society.

(2) While a co-operative society is being wound up no suit or other legal proceeding relating to the business of such society shall be proceeded with or instituted against the liquidator as such or against the society or any member thereof except by leave of the Registrar and subject to such terms as he may impose.

(3) Save as provided in this Act, no order, decision or award under this Act shall be liable to be challenged, set aside, modified, revised or declared void in any Court on any ground whatsoever except want of jurisdiction.

134. (1) An appeal shall lie from an order shown in column 2 of the Fourth Schedule to the authority shown in column 3 and within the period shown in column 4 thereof.

Appeal.

[Ben. Act XXI]

(Chapter XIII.—Jurisdiction, Appeal and Revision.—Chapter XIV.—Offences, Penalties and Procedure.—Sections 135—138.)

(2) Save as provided in this Act, no appeal shall lie against any order, decision or award passed in accordance with this Act, and every such order, decision or award shall be final.

Review
and
revision.

135. (1) The State Government may call for and examine the record of any inquiry or inspection held or made under this Act or the proceedings of the Registrar or any person subordinate to him or acting on his authority, and may pass thereon such orders as it thinks fit.

(2) The Registrar may at any time—

(a) revise any order passed by himself; or

(b) call for and examine the record of any inquiry or inspection held or made under this Act or the proceedings of any person subordinate to him or acting on his authority, and if it appears to him that any decision, order or award or any proceedings so called for should for any reason be modified, annulled or reversed, may pass such orders thereon as he thinks fit:

Provided that, before any order is made under clause (a) or clause (b), the Registrar shall afford to any person, likely to be affected adversely by such order, an opportunity of being heard.

CHAPTER XIV.

OFFENCES, PENALTIES AND PROCEDURE.

Offences
and
penalties.

136. Any person mentioned in column 3 of the Fifth Schedule who is guilty of an offence shown in column 2 thereof shall, notwithstanding anything contained in this Act or any other law for the time being in force, be liable on conviction to the penalty shown in column 4 thereof.

Cognisance
of
offences.

137. (1) No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

(2) For the purposes of the Code of Criminal Procedure, 1898, every offence under this Act shall be deemed to be non-cognisable. Act V of 1898.

(3) No prosecution shall be instituted under this Act without the previous sanction of the Registrar.

Presump-
tion
raised by
entry in
register
of
members,
etc.

138. Any register of members or shares kept by a co-operative society in the prescribed manner shall be *prima facie* evidence of any of the following particulars entered therein—

(a) the date on which the name of any person was entered in such register or list as a member; and

(b) the date on which any such person ceased to be a member.

¹See footnote 4 on page 179, ante.

of 1940.]

(Chapter XIV.—Offences, Penalties and Procedure.—Chapter XV.—Rules.—Sections 139, 140.)

139. (1) A copy of any entry in a book of a co-operative society, regularly kept in the course of business and in the prescribed manner, shall, if certified in the prescribed manner, be received in any suit or legal proceeding as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is admissible.

Proof of entries in societies' books.

(2) No officer or liquidator of a co-operative society and no officer in whose office the books of a co-operative society are deposited after the society has been wound up shall, in any legal proceedings to which the society or the liquidator is not a party, be compelled to produce any of the society's books the contents of which can be proved under sub-section (1), or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless specially so directed by an order of the Court or the arbitrator.

CHAPTER XV.

RULES.

140. (1) The ¹State Government may, for the whole or any part of ²[West Bengal], and for any co-operative society or class of co-operative societies, after previous publication, make rules to carry out the purposes of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely:—

- (i) the sums which, in addition to those referred to in clause (o) of section 2, shall be deducted from profits;
- (ii) the period which shall be a co-operative year;
- (iii) the exemption of any society or class of societies from, and the extent of application to, any society or class of societies of, any of the provisions of this Act;
- (iv) the extent and manner of delegation of powers ³[and duties] entrusted to the Registrar;
- (v) the conditions for registration of any co-operative society or class of societies;
- (vi) the forms to be used and the conditions to be complied with in the making of an application for the registration of a co-operative society and the procedure in the matter of such application;

¹See footnote 4 on page 179, *ante*.

²See footnote 2 on page 179, *ante*.

³These words within square brackets were inserted by section 2 and the First Schedule to the West Bengal Laws (Amendment and Repeal) Act, 1947 (West Ben. Act XII of 1947).

(Chapter XV.—Rules.—Section 140.)

- (vi) the procedure and conditions for the division of a co-operative society and amalgamation of co-operative societies;
- (vii) the extent to which a co-operative society may limit the number of its members;
- (ix) the matters in respect of which a co-operative society shall or may make by-laws, and the procedure and conditions for amending the by-laws;
- (x) the procedure and conditions for the exercise by the financing bank of the powers conferred by section 18;
- (xi) the procedure for calling and holding general meetings, and the powers to be exercised by such meetings;
- (xii) the circumstances in which delegates may be elected for the purposes of section 20, the manner of electing delegates for any of the purposes of this Act and the manner in which delegates so elected, shall vote ;
- (xiii) the date for the closing of the annual accounts of a co-operative society;
- (xiv) the method of constituting the managing committee of a co-operative society (including the appointment of persons to represent appropriate interests);
- (xv) the qualifications, disqualification, term of office, suspension and removal of members of managing committees and officers of different classes of co-operative societies ;
- (xvi) the procedure at meetings of the managing committee and the powers to be exercised and the duties to be performed by the managing committee and officers of a society;
- (xvii) the conditions of deputation of, and the powers to be exercised and duties to be performed by, a servant of the ¹Government deputed under section 24;
- (xviii) the procedure and conditions for the suspension or supersession of the managing committee of a co-operative society and the method of appointment and qualifications of a person appointed under section 26;
- (xix) the procedure for registering the address of a co-operative society and any change of its address;
- (xx) the minimum number of paid staff to be employed by different classes of co-operative societies and the qualifications thereof ;
- (xxi) the accounts, books and registers to be kept and the returns to be submitted by a co-operative society, the form in which and the persons by whom such accounts, books and registers shall be kept and such

¹See footnote 2 on page 186, ante.

of 1940.]

(Chapter XV.—Rules.—Section 140.)

- returns submitted, the method in which such accounts, books and registers shall be kept in custody and destroyed and the charges which may be assessed and levied for the preparation of any return not submitted in accordance with the rules ;
- (xxii) the documents to be kept open to inspection by a co-operative society under section 30;
- (xxiii) the manner in which the balance-sheet shall be published under section 31;
- (xxiv) the conditions and terms under which, the manner in which and the extent to which funds may be raised by a co-operative society by means of shares, deposits, debentures or otherwise, and the manner in which provision shall be made for the maintenance of fluid resource ;
- (xxv) the procedure and conditions for the issue, redemption, re-issue, transfer, replacement or conversion of debentures, issued by a co-operative society ;
- (xxvi) the maximum amount of principal, the rate of interest and other conditions for the guarantee of debentures under section 33;
- (xxvii) the procedure and conditions for varying an instrument of trust between the Trustee and a co-operative society;
- (xxviii) the procedure whereby, and the conditions under which, guarantees or financial assistance may be given under section 33 or section 38;
- (xxix) the payments to be made and the conditions to be complied with by members applying for loans from a co-operative society, the period for which loans may be made and the amount which may be lent to an individual member ;
- (xxx) the conditions in which and the extent to which loans may be made in relaxation of the provisions of sub-section (1) of section 39 and the determination by a society of the maxima and normal credits of its members;
- (xxxi) the manner in which co-operative societies may be given an opportunity of being heard under sub-section (2) of section 39;
- (xxxii) the prohibitions and restrictions subject to which co-operative societies may transact business with persons who are not members;
- (xxxiii) the procedure and conditions for change of the form of liability of a co-operative society under section 43;

(Chapter XV.—Rules.—Section 140.)

(xxxiv) in any case in which a notice or process is issued under this Act or the rules—

- (a) the form of the notice or process;
- (b) the period of notice to be given;
- (c) the persons on or against whom the notice or process shall be issued; and
- (d) the conditions to be fulfilled in order to establish proof of the service of such notice or process;

(xxv) the form of the written statement of claim required by section 44;

(xxvi) the form of application under, the form of map and statement and the manner of their publication required by, and the manner of levying water rate and embankment protection rate provided in, sections 48 and 49;

(xxvii) the conditions in which any charge in favour of a co-operative society shall be satisfied and the extent to which and the order in which the property subject to the charge shall be used in its satisfaction;

(xxviii) the form of and procedure for an application under section 54 and the procedure for calling, holding and conducting a meeting under that section;

(xxix) the manner in which a co-operative society may invest or deposit its funds under section 55;

(xl) the proportion which shall be annually carried under section 56 to the reserve fund from the net profits of a co-operative society, the extent to which a society may use its reserve fund in its business and the method in which the reserve fund shall be invested;

(xli) the conditions in which, and the extent to which, the profits of a co-operative society may be distributed among its members under section 57;

(xlii) the co-operative purposes for which a co-operative society shall under section 58 contribute a percentage of its net profits, the extent of the contribution which may be made under clause (b) of that section and the manner of making such contributions;

(xliii) the amount or proportion of contribution which a co-operative society may make to a provident fund under section 59;

(xliv) the conditions in which a member of a co-operative society shall be disqualified from voting under sub-section (2) of section 60;

(xlv) the conditions to be complied with by a person applying for admission or admitted as a member of a co-operative society, the procedure for the admission, expulsion and resignation of members and the conditions for the exercise by members of the rights of membership;

of 1940.]

(Chapter XV.—Rules.—Section 140.)

- (xlv) the manner of recalling a loan under section 63;
- (xlvii) the maximum portion of the share capital of a co-operative society which may be held by a member under section 67;
- (xlviii) the conditions for the maximum holding of a member under section 68;
- (xlix) the procedure and conditions for, and the method of, nomination by a member of a transferee under section 69;
- (l) the procedure and conditions for the substitution by a society under sub-section (1) of section 70 of another person for the nominee of a deceased member and for the decision by the society to proceed under sub-section (2) of that section, and the procedure for calculating the value of the share or interest of a member or the sums due to him for the purposes of sections 70 to 74 inclusive;
- (li) the manner of determining the value of land for the purposes of clause (3) of section 72;
- (lii) the circumstances and manner in which a member may resign or be expelled from a co-operative society;
- (liii) the procedure by which a co-operative society shall calculate and write off bad debts;
- (liv) the date by which the annual audit shall be made and an audit report submitted, the procedure of an audit officer conducting an audit, the matters on which he shall submit a report, the form in which the statement of accounts shall be prepared for his audit, the limits within which he may examine the monetary transactions of the society, the form of his audit report and statement of accounts audited and the charges, if any, to be paid by a co-operative society for audit;
- (lv) the manner in which appointments shall be made and control exercised by, and the number of persons comprising, and the other functions to be performed by the authority constituted under section 81, the manner of election and nomination of such persons, the fee to be paid to such authority and the manner of such payment;
- (lvi) the conditions to be fulfilled and the qualifications to be possessed by a member of the paid staff of a financing bank certified by the Registrar under sub-section (2) of section 82;
- (lvii) the qualifications of and method of appointing an arbitrator, the procedure to be followed in proceedings under Chapter IX and the method of calculating charges incidental to such proceedings and of enforcing decisions therein;

(Chapter XV.—Rules.—Section 140.)

- (lviii) the cases in which and the conditions under which it shall be obligatory upon the Registrar to order the winding up of a co-operative society;
- (lix) the procedure for the appointment and removal of, and for the payment of a remuneration to, a liquidator, the condition of such appointment, the conditions in which the Registrar shall exercise control of a liquidator and direct him to exercise his powers under section 91, and the procedure to be followed in proceedings under Chapter X;
- (lx) the manner in which the surplus assets of a society which has been wound up shall be disposed of and its records shall be deposited;
- (lxi) the manner of effecting distraint and the procedure for the custody, preservation and sale of the property distrained (including such as is perishable), the investigation of claims of persons other than the defaulter to any right or interest in the distrained property and the postponement of sale pending such investigation;
- (lxii) the qualifications and method of appointment of a Sale Officer under section 102 and the powers and functions which such a Sale Officer may exercise;
- (lxiii) in the case of a sale of immovable property under Chapter XI—
 - (a) the procedure for proclamation and conduct of the sale and the conditions in which an attempted sale may be abandoned;
 - (b) the method of calculating the expenses incidental to the sale or attempted sale;
 - (c) the procedure for the receipt, deposit and disposal of the proceeds of sale;
 - (d) the procedure for a resale if an attempted sale is abandoned or the purchase money is not deposited within the prescribed time, and the penalty to be levied against a purchaser who fails so to deposit the purchase money;
 - (e) the period within which an application to set aside a sale under section 105 shall be made;
 - (f) the procedure for the payment to the purchaser of the purchase money and compensation deposited under section 105;

of 1940.]

(Chapter XV.—Rules.—Section 140.)

- (g) the form and method of submission of a report by a co-operative land mortgage bank under sub-section (1) of section 106;
- (h) the form of sale certificate under section 108, the form of the notices to be supplied under sub-section (3) of that section, the fee payable for the service of such notices, and the manner of serving such notices on, and of transmitting landlord's fee to, the landlord named in such notices; and
- (i) the procedure for the delivery by the Court of the property purchased to the purchaser under section 109;
- (lxiv) the time within which and the procedure according to which property purchased by a co-operative land mortgage bank at a sale of immovable property under Chapter XI shall be disposed of by the bank;
- (lxv) in respect of a receiver appointed under section 112, the conditions in which he may be appointed or removed, the powers and functions which he may exercise and his procedure in the exercise thereof and the expenses of management and the remuneration which he may receive;
- (lxvi) the circumstances in which action may be taken by the bank against the mortgagor under section 114 and the proportion referred to in the explanation to that section;
- (lxvii) the procedure and conditions for the exercise of the powers conferred by section 115, and for the imposition of restrictions by the Trustee or the Registrar upon a co-operative land mortgage bank under section 121;
- (lxviii) the fee payable under sections 118 and 119;
- (lxix) the procedure and conditions for the exercise of the powers conferred by sections 123 and 124;
- (lxx) the procedure for the conditional attachment of property under section 125;
- (lxxi) the persons who may make awards under sections 126;
- (lxxii) the procedure and principles for the conduct of an inquiry under section 127 and the matters referred to in clause (b) of sub-section (1) thereof;
- (lxxiii) the exercise of the powers conferred by section 128;

(Chapter XV.—Rules.—Section 140.—First Schedule.)

- (lxxiv) the procedure and principles for the exercise of the powers conferred by section 129;
- (lxxv) in the case of appeals lying to the ¹State Government, the authority to which the power of hearing appeals may be delegated;
- (lxxvi) the method of certification of any document under section 139, the procedure and conditions for obtaining copies of documents and the charges to be levied for the supply of certified or uncertified copies;
- (lxxvii) the procedure and conditions for inspecting documents in the office of the Registrar and the charges, if any, to be levied for such inspection;
- (lxxviii) the procedure for and method of calculating any costs, charges or expenses required to be levied under this Act or the rules;
- (lxxix) the procedure for and method of recovery of any sums due under this Act or the rules;
- (lxxx) the method of communicating or publishing any order, decision or award required to be communicated or published under this Act or the rules.

(3) In making any rule under this Act the ¹State Government may direct that any person committing a breach thereof shall on conviction by a Court be punishable with fine which may extend to fifty rupees and, where the breach is a continuing one, with further fine which may extend to ten rupees for every day after the first during which the breach continues subsequent to such conviction.

FIRST SCHEDULE.

ENACTMENTS REPEALED.

[*Repealed by section 3 and the Second Schedule to the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).*]

¹See foot-note 4 on page 155, *ante*.

of 1940.]

(Second and Third Schedules.)

SECOND SCHEDULE.

POWERS EXCLUSIVELY EXERCISABLE BY THE REGISTRAR.

(See section 10.)

Serial.	Section.	Powers.
1	2	3
1	18 ..	To register an amendment of a by-law of a co-operative society which is a member of a financing bank, if the financing bank considers such amendment to be necessary or desirable and if the society has failed to make the amendment when called upon by the bank to do so.
2	43(1) ..	To approve a change in the form of liability of a co-operative society.
3	56(4)(c) ..	To approve the bank, other than a Government Savings Bank, in which the reserve fund of a co-operative society may be invested or deposited.
4	127(2) ..	To require of any person who has taken part in the organisation or management of a co-operative society or any past or present officer of such society, to contribute to the assets of the society any sum by way of compensation for any payment made, loss incurred or sum not accounted for in consequence of the action of such person or officer, or to restore any property misappropriated or fraudulently retained by such person or officer, and to require such person or officer to pay any sum to meet the costs of proceedings under this section.
5	128 ..	To impose penalties for certain contraventions of the provisions of this Act, the rules or by-laws.
6	129 ..	To enforce performance of certain obligations by a co-operative society, and to require the officer of the society whom the Registrar considers to be responsible for the default to pay a certain sum to the assets of the society.
7	133(2) ..	To give leave and impose terms for the institution of a suit or other legal proceeding against a liquidator, a co-operative society or any member thereof while such society is being wound up.
8	137(3) ..	To sanction the institution of any prosecution under this Act.

THIRD SCHEDULE.

RECOVERY OF SUMS DUE.

(See section 130.)

Serial	Nature of sum due.	Method of recovery.
1	2	3
1	Expenses incurred in writing up the accounts of a society under section 77; and sums awarded under section 129.	By the Collector as a public demand upon requisition by the Registrar or, in the case of section 77, with his approval by the audit officer.
2	Costs of an inquiry or inspection apportioned under section 85; recovery of dues awarded under section 126; contributions by way of compensation awarded under section 127; and sums awarded under section 128.	By the Collector as a public demand upon requisition by the Registrar.

(Third and Fourth Schedules.)

Serial. 1	Nature of sum due. 2	Method of recovery. 3
3	Sums awarded to a co-operative society by any order made under section 87 or by an award having the effect of a final mortgage decree under section 88.	By the Collector as a public demand upon requisition by the society ; Or : By any Civil Court having local jurisdiction, in the same manner as a decree of such court, upon application by the society.
4	Sums assessed by a liquidator as contributions under section 91.	By the Collector, as a public demand upon requisition by the Registrar or by the liquidator.
5	Sums due under any rule made under this Act.	In the manner prescribed.

FOURTH SCHEDULE.

APPEALS.

(See section 134.)

Serial. 1	Order appealable. 2	By whom the appeal may be preferred ; and authority to which appeal lies. 3	Period of limitation. 4
1	An order refusing to register a co-operative society under section 15 or an amendment of a by-law under section 17.	By any member of the society ; (a) If passed by the Registrar; to the 'State Government; or (b) If passed by any other person; to the Registrar.	Two months from the date on which the order is communicated to the society.
2	An order refusing to register an amendment under section 18.	By the financing bank; to the 'State Government.	Two months from the date on which the order is communicated to the financing bank.
3	An order of disqualification under section 25 or an order under section 26 dissolving a managing committee and appointing a person to manage the affairs of a society.	By any member of the managing committee; (a) If passed by the Registrar; to the 'State Government; or (b) If passed by any other person; to the Registrar.	Two months from the date on which the order is communicated to the society.
4	An entry in or omission from the map or the statement of irrigable area prepared under section 48 or of protected area prepared under section 49.	By any person aggrieved; to the Collector.	One month from the date of publication of the statement.

¹See footnote 4 on page 155; *ante*.

of 1940.]

(Fourth and Fifth Schedules.)

Serial.	Order appealable.	By whom the appeal may be preferred ; and authority to which appeal lies.	Period of limitation.
1	2	3	4
5	Assessment of water rate under section 48 or of embankment protection rate under section 49.	By any person aggrieved; to the Registrar.	One month from the date of assessment.
6	An order under section 85 apportioning costs.	By any person aggrieved; to the District Judge.	One month from the date on which the order was communicated to the person aggrieved.
7	Any order, decision or award of the Registrar or an arbitrator under section 87 or 88.	By any person aggrieved; (a) If passed by the Registrar; to the State Government; or (b) If passed by any other person; to the Registrar.	One month from the date on which the order, decision or award was communicated to the person aggrieved.
8	An order passed under section 89 for the winding up of a society.	By any member of the society ; (a) If passed by the Registrar; to the State Government; or (b) If passed by any other person; to the Registrar.	Two months from the date on which the order was communicated to the society.
9	Any order, decision or award of a Liquidator under section 91.	By any person aggrieved; to the Registrar.	Two months from the date on which the order, decision or award was communicated to the person aggrieved.
10	An order passed under section 127 or section 129.	By any person aggrieved; to the District Judge.	Three months from the date on which the order was communicated to the person aggrieved.
11	Any order or decision declared by rules under this Act to be appealable.	By the person declared by the rules to be competent to appeal to the prescribed authority.	The period prescribed.

FIFTH SCHEDULE.

OFFENCES AND PENALTIES.

(See section 136.)

Serial.	Offences.	Person liable.	Penalty.
1	2	3	4
1	Unauthorised use of the word "co-operative" in any name or title under which business is carried on in contravention of section 7.	The company, society or person carrying on business under a name or title in which the word is thus used.	Fine which may extend to fifty rupees; and in the case of a continuing offence a further fine of five rupees for each day on which the offence is continued after conviction therefor.

¹See foot note 4 on page 179, ante.

[Ben. Act XXI of 1940.]

(Fifth Schedule.)

Serial 1	Offences. 2	Person liable. 3	Penalty. 4
2	Wilful neglect or refusal by any person to do any act, make any return or furnish any information required to be done, made or furnished under this Act or the rules.	The person neglecting or refusing to do the act, make the return or furnish the information.	Fine which may extend to fifty rupees; and in the case of a continuing offence a further fine of five rupees for each day on which the offence is continued after conviction therefor.
3	Wilfully making a false return or furnishing false information required to be made or furnished under this Act or the rules.	The person wilfully making the false return or furnishing the false information.	Fine which may extend to one hundred rupees.
4	Removing or otherwise disposing of or suffering to be removed or otherwise disposed of any property on which a co-operative society holds a first charge under section 47 with intent to defraud the society or with such intent doing any other act to the prejudice of the society's first charge.	The person by whom or on whose behalf the property is removed or disposed of or the act done.	Fine which may extend to two hundred rupees.
5	Any act or omission declared by the rules to be an offence.	The person rendered liable by the rules.	The penalty provided in the rules.

Bengal Act I of 1941¹

THE OFFICIAL TRUSTEES (BENGAL AMENDMENT) ACT, 1941.

ADAPTED

The Indian Independence (Adaptation of
Bengal and Punjab Acts) Order, 1948.

[20th March, 1941.]

*An Act further to amend the Official Trustees Act, 1913, in its appli-
cation to Bengal.*

of 1913. II WHEREAS it is expedient further to amend the Official Trustee Act, 1913, in its application to Bengal, in the manner hereinafter appearing ;

It is hereby enacted as follows:—

1. This Act may be called the Official Trustees (Bengal Amendment) Act, 1941. Short title.

2. The Official Trustees Act, 1913, shall, in its application to [West Bengal], be amended in the manner hereinafter provided. Application of Act.

3. After section 14 of the Official Trustees Act, 1913 (hereinafter referred to as the said Act), the following section shall be inserted, namely:— Insertion of new section 14A in Act II of 1913.

“14A. The Official Trustee for ²[West Bengal] may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath (which he is hereby authorised to administer) any person who is willing to be examined by him regarding such question.”

4. After section 30 of the said Act, the following section shall be inserted, namely :— Insertion of new section 30A.

• • • “30A. Whoever, during any examination authorised by this False evidence. Act, makes upon oath a statement which is false and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.”

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 7th November, 1940, Part IVA, page 335 ; for the Proceedings of the Assembly, see the Proceedings of the meeting of the Bengal Legislative Assembly, held on the 3rd December, 1940; for the Proceedings of the Council, see the Proceedings of the meetings of the Bengal Legislative Council, held on the 9th December, 1940 and 11th January, 1941.

²The words within square brackets were substituted for the word “Bengal” by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

Bengal Act V of 1941¹

THE BENGAL MOTOR SPIRIT SALES TAXATION ACT, 1941.

AMENDED

- Ben. Act XIII of 1946.
- West Ben. Act I of 1948.
- West Ben. Act XXVII of 1948.
- West Ben. Act XIV of 1954.
- West Ben. Act XXXII of 1954.
- West Ben. Act XXXI of 1955.

ADAPTED

- The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
- The Adaptation of Laws Order, 1950.

[12th June, 1941.]

An Act to provide for the levy of a tax on retail sales of motor spirits in Bengal.

WHEREAS it is expedient to further the construction of new roads in Bengal, and therefore to provide for the levy of a tax on retail sales of motor spirit in Bengal;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Motor Spirit Sales Taxation Act, 1941.

Short title, extent and commencement.

(2) It extends to the whole of ²[West Bengal].

(3) It shall come into force on such date³ as the ⁴State Government may, by notification in the *Official Gazette*, appoint.

2. In this Act, unless there is anything repugnant in the subject or context—

Definitions.

Page 237— (a) “motor spirit” means any liquid or admixture of liquids

In clause (a) of section 2, omit the words “. and which has a flashing point below 76 degrees Fahrenheit”.

(Omitted by West Ben. Act XVIII of 1957, section 2.)

[No. 2, dated the 1st August, 1958.]
declared that ~~in this Act, the word “motor spirit”~~
means of carriage, conveyance or transport, by land, air or water ;

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 7th November, 1940, Part IVA, page 331; the Report of the Select Committee was presented to the Assembly on the 3rd February, 1941; for the Proceedings of the Bengal Legislative Assembly, see the Proceedings of the meetings, held on the 28th November, 1940 and 3rd and 4th February and 3rd April, 1941; for the Proceedings of the Bengal Legislative Council, see the Proceedings of the meetings, held on the 14th February, 4th, 10th and 11th March, 1941.

²The words within square brackets were substituted for the word “Bengal” by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts), Order, 1948.

³This Act came into force on the 7th day of August, 1941, vide Notification No. 1911F., dated the 4th August, 1941, published in the *Calcutta Gazette*, dated the 7th August, 1941, Part I, page 1902.

⁴The word “State” was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁵This *Explanation* was added with retrospective effect by section 2 of the Bengal Motor Spirit Sales Taxation (Amendment) Act, 1955 (West Ben. Act XXXI of 1955).

(Section 3.)

- (b) "prescribed" means prescribed by rules made under this Act;
- (c) "retail dealer" means any person who sells or keeps for sale motor spirit for the purpose of consumption by the purchaser;
- (d) "retail sale" means a sale of motor spirit by a retail dealer for the purpose of consumption by the purchaser;
- (e) "wholesale dealer" means any person who sells motor spirit, or keeps motor spirit for sale, to retail dealers in such spirit, for the purpose of re-sale or for consumption by such dealers.

Explanation.—A sale of motor spirit by a co-operative society

In sub-section (1) of section 3,—

- (a) for the words "six annas" substitute the words "forty naye paise"; and
- (b) for clause (i) of the proviso, substitute the following clause, namely:—
- "(i) the tax on all retail sales of motor spirit which has a flashing point at or above 76 degrees Fahrenheit shall be charged at the rate of twenty naye paise per gallon;"

(Substituted by West Ben. Act XVIII of 1954—

VOLUME V

Page 238—

In sub-section (1) of section 3,—

- (1) for the words "forty naye paise per gallon", substitute the words "nine naye paise per litre";
- (2) for clause (i) of the proviso, substitute the following clause, namely:—
- "(i) the tax on all retail sales of motor spirit which has a flashing point at or above 24.4 degrees Centigrade shall be charged at the rate of five naye paise per litre;"

(Substituted by West Ben. Act. IX of 1960, section 2.)

[No. 6, dated the 1st August, 1961.]

*The Bengal Motor Spirit Sales Taxation (Amendment) Act, 1946 (Ben. Act XIII of 1946), came into force on the 1st November, 1956, vide Notification No. 10549, dated the 12th October, 1946, published in the *Calcutta Gazette, Extraordinary*, of the 14th October, 1946.

*See footnote 4 on page 237, ante.

*This proviso was substituted for the existing proviso by section 2(a) of the Bengal Motor Spirit Sales Taxation (Second Amendment) Act, 1954 (West Ben. Act XXXII of 1954).

members for
se (d).
in this Act,
motor spirit
Bengal Motor
at the rate
to the State
Ben. Act
XIII of
1946.
the purpose of
date of the
Sales Taxa-
shall be charged at
West Ben.
Act
XXXII
of 1954.
sold to a retail
own consumption
plies of motor
ment may by
him in advance
lers under sub-
he motor spirit,
assessment and
may be agreed
s were substituted
er, 1941, a tax at
rit Sales Taxation
2, as amended by

of 1941.]

(Section 4.)

(3) No tax shall be levied under this Act on the sale of any motor spirit in respect of which such tax has already been paid.

1* * * *

²(5) No tax shall be levied under this Act on the sale of any motor spirit to Diplomatic or Consular Officers of such countries as may be specified in this behalf by the ³State Government by ⁴notification in the *Official Gazette*.

4. (1) No person shall, after the commencement of this Act, carry on business in motor spirit as a wholesale or retail dealer at any place except under a licence granted under this Act and in conformity with the conditions of such licence:

No dealer to carry on business without a licence.

Provided that persons carrying on such business at the commencement of this Act shall be allowed two months from such commencement to obtain such licence.

(2) Where a retail dealer has more than one place of business, whether in the same district, village or town or in different districts, villages or towns, he shall obtain a separate licence in respect of each such place of business.

(3) No wholesale dealer shall, except under a licence granted under this Act for carrying on business in motor spirit as a retail dealer, sell motor spirit for consumption or sale in ⁵[West Bengal] to any person other than a wholesale or retail dealer, possessing a licence under this Act.

(4) Application for licence under this Act for carrying on business in motor spirit as a wholesale or retail dealer shall be made in such form and to such authority as may be prescribed.

(5) If the authority referred to in sub-section (4) is satisfied that an application for a licence is in order he shall issue the licence to the applicant and every such licence shall be in the prescribed form and contain the prescribed particulars and shall be subject to the prescribed conditions.

(6) Subject to such conditions as may be prescribed, a licence granted under this section may be suspended or cancelled by the authority which granted it—

(a) if there is any contravention of any of the provisions of this Act or any breach of the conditions subject to which the licence was granted, or

(b) if the holder of the licence has ceased to carry on the business or has sold or otherwise transferred his interest in the business in respect of which the licence was granted.

¹Sub-section (4) was omitted by section 2(b) of the Bengal Motor Spirit Sales Taxation (Second Amendment) Act, 1954 (West Ben. Act XXXII of 1954).

²This sub-section was added by section 2 of the Bengal Motor Spirit Sales Taxation (West Bengal Amendment) Act, 1948 (West Ben. Act XXVII of 1948).

³See foot-note 4 on page 237, *ante*.

⁴The United States of America has so far been specified under this sub-section, *vide* Notification No. 1659-F.T., dated the 22nd October, 1948, published in the *Calcutta Gazette*, dated the 11th November, 1948, Part I, page 1479.

⁵See foot-note 2 on page 237, *ante*.

(Sections 5—7.)

(7) The holder of a licence shall not be entitled to any compensation for any loss or damage if suffered by him as a result of suspension or cancellation of his licence under sub-section (6).

Retail
dealers
to keep
books of
account
and
submit
returns.

5. Every retail dealer shall in respect of his business at each place where he carries on business—

- (a) keep books of account in the prescribed form; and
- (b) submit every month to such authority as may be prescribed a correct return in the prescribed form and by the prescribed date showing—
 - (i) the quantity of motor spirit received by him during the preceding month;
 - (ii) the quantity sold by him during such month;
 - (iii) the quantity consumed by him out of his own stock of motor spirit during such month; and
 - (iv) such other particulars as may be prescribed.

Payment
of the
tax and
receipt for
such
payment.

6. Before submitting the return referred to in clause (b) of section 5 in each month, the retail dealer shall pay into a Government treasury or the Reserve Bank of India, the full amount of the tax due under this Act in respect of the motor spirit sold by him in retail or consumed by him out of his own stock during the preceding month according to such return, and furnish along with the return a receipt from such treasury or Bank showing payment of such amount.

Determi-
nation of
the
amount
of tax by
the pre-
scribed
authority
in certain

7. (1) If no return is submitted by a retail dealer under clause (b) of section 5 in respect of any month by the prescribed date in that behalf, or if the return is submitted without a receipt showing payment of the full amount of the tax due as required by section 6 or if the return submitted appears to the authority referred to in clause (b) of section 5 to be incorrect or incomplete, such authority shall, after making such inquiry, if any, as it considers necessary, determine the amount of the tax due from such retail dealer in respect of such month and the amounts so determined less the sum, if any, already paid by him shall be paid by the retail dealer into a Government treasury or the Reserve Bank of India within fourteen days ¹[from the date of service in the prescribed manner of notice of demand therefor to be issued by the authority] :

Provided that before the prescribed authority determines under this sub-section the amount of the tax due, the retail dealer shall be given a reasonable opportunity of proving the correctness and completeness of the return, if any, submitted by him, and for this purpose he shall be allowed a period of not less than seven days.

¹The words within square brackets were substituted for the words "after demand is made therefor" by section 2 of the Bengal Motor Spirit Sales Taxation (Amendment) Act, 1954 (West Ben. Act XIV of 1954).

of 1941.]

(Sections 8—10.)

Page 241-

*After section 7, insert the following section, namely:—

Action taken and proceedings commenced or continued in the trade name of a business.

“7A. Notwithstanding anything contained in any law for the time being in force, in respect of any business carried on under a trade name,—

(1) action may be taken under this Act in any matter connected with the purposes of this Act including the realisation of taxes or penalty, and proceedings for the recovery of any such taxes or penalty may be commenced or continued under any law against the person owning the business, and

unds.

(2) no action taken or proceedings commenced before the commencement of the West Bengal Tax Laws (Amendment) Act, 1959, shall be called in question merely on the ground that such action was taken or such proceedings were commenced in the trade name of the business.”

(Inserted by West Ben. Act VII of 1959, section 2.)

lesale
or
ep
s of

[No. 4, dated the 1st June, 1959.]

(i) the quantities of motor spirit supplied by him during the preceding quarter to retail dealers in ¹[West Bengal], specifying the name and address of each retail dealer, the quantity supplied to him and the dates on which the supplies were made; and

account
and submit
returns.

(ii) such other particulars as may be prescribed.

10. (1) No person carrying on business in motor spirit as a wholesale or retail dealer shall sell or otherwise dispose of such business or any part thereof except to a person possessing an appropriate licence under this Act to carry on such business.

Transfer
of business.

(2) If any person carrying on any such business sells or otherwise disposes of such business or any part thereof, he shall within fourteen days inform the prescribed authority accordingly; and if any such person dies, his legal representative shall in like manner inform the said authority.

(3) If any person carrying on any such business dies, his legal representative shall either—

(a) apply within thirty days for an appropriate licence under this Act to carry on the business; or

(b) sell or otherwise dispose of the business within thirty days to a person possessing an appropriate licence under this Act to carry on the business; or

(c) dispose of the stocks of motor spirit, in respect of the sale of which tax under this Act has not been paid, under the directions of the authority referred to in sub-section (2).

¹See foot-note 2 on page 237, ante.

(Sections 11—14.)

(4) When the ownership of the business in motor spirit or any part thereof of a retail dealer is transferred, any tax payable under this Act in respect of sales of such business or part thereof, by such retail dealer which remains unpaid at the time of the transfer shall be payable by the transferee.

Powers of inspection, entry and search.

11. (1) Any person empowered by the ¹State Government in this behalf may, for the purposes of this Act,—

- (a) require any wholesale or retail dealer to make available for inspection at the ordinary place of business of the dealer all accounts, vouchers and other documents relating to stocks, purchases, sales and deliveries of motor spirit, or to furnish any other information relating thereto, and every such wholesale and retail dealer shall comply with such requisition ; and
- (b) inspect such accounts, vouchers and documents of, and the motor spirit stocked by, any wholesale or retail dealer.

(2) For the purpose of sub-section (1) any such person specially empowered by the ¹State Government in this behalf may enter and search at any time by day any building, vessel, vehicle or place in which he has reason to believe that any wholesale or retail dealer carries on business or keeps any stock of motor spirit.

(3) All searches made under sub-section (2) shall be made in accordance with the provisions of the Code of Criminal Procedure, 1898.

Act V of 1898.

Determination of certain questions by the prescribed authority.

12. Any question as to whether a tax or penalty is recoverable under this Act, the person from whom it is due and the amount so recoverable shall be determined by the prescribed authority.

Returns, etc., to be confidential.

13. No person to whom any returns under this Act are submitted or who makes an inspection under section 11 shall, save with the previous sanction of the ¹State Government, disclose any information obtained from any such return or inspection, otherwise than departmentally or for the purposes of a prosecution under the Indian Penal Code in respect of any such return, or of any account, voucher or other document inspected, or for the purposes of a prosecution under this Act.

Act XLV of 1860.

Penalties.

14. Any person who—

- (a) carries on business in motor spirit as a wholesale or a retail dealer at any place except under a licence granted under sub-section (1) of section 4 or when the licence granted under that sub-section in respect of such place of business is no longer in force ; or

¹See foot-note 4 on page 237, *ante*.

of 1941.]

(Sections 15—18.)

- (b) fails to keep books of account as required by clause (a) of section 5 ; or
 - (c) fails to submit any return as required by clause (b) of section 5 or by section 9 or submits a false return ; or
 - (d) fraudulently evades the payment of any tax due under this Act ; or
 - (e) neglects to furnish any information required by sub-section (2) of section 10 or acts in contravention of the provisions of that section ; or
 - (f) refuses to comply with a requisition under clause (a) of sub-section (1) of section 11 or obstructs any officer making an inspection or a search under section 11 ; or
 - (g) discloses any information in contravention of the provisions of section 13 ; or
 - (h) acts in contravention of any of the provisions of this Act ;
- shall on conviction be punished with fine which may extend to one thousand rupees, and in the case where the failure, evasion or contravention is a continuing one with a further fine which may extend to fifty rupees for every day after the first during which such failure, evasion or contravention continues subsequent to such conviction.

15. All offences punishable under this Act shall be cognizable and bailable.

Offences to be cognizable and bailable.

16. (1) Subject to such conditions as may be prescribed the prescribed authority may accept from any person charged with any offence punishable under this Act or any rule made thereunder, by way of composition for such offence, payment of a sum of money not exceeding five hundred rupees or double the amount of the tax payable, whichever is greater.

Power to compound offences.

(2) If payment by way of composition is accepted under sub-section (1), the accused, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of such offence.

17. (1) No Court shall take cognizance of any offence under this Act or the rules made thereunder except upon a complaint made with the previous sanction of the prescribed authority.

Jurisdiction to try offences.

(2) No Court inferior to that of a Presidency Magistrate or a Magistrate of the second class shall try an offence punishable under this Act.

18. All persons empowered to perform any function under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Officers to be deemed public servants.

(Sections 19—21.)

Indemnity. 19. No suit, prosecution or other legal proceedings shall lie against any servant of the ¹[Government] for anything which is in good faith done or intended to be done under this Act.

Appeal and revision. 20. (1) Any person agrieved by any order made under this Act or the rules made thereunder may appeal to the prescribed authority within thirty days from the date of such order :

²Provided that an appeal from an order under sub-section (1) of section 7, determining the amount of tax due from a retail dealer may be preferred within thirty days from the date of service of the notice of demand issued under that sub-section.

(2) Every order passed in appeal under this section shall, subject to the powers of revision conferred by sub-section (3), be final.

(3) The prescribed authority may, at any time, either of its own motion or on application call for and examine the record of any order passed or the proceedings recorded by any officer or person subordinate to such authority, for the purpose of satisfying itself as to the legality or propriety of such order, or as to the regularity of such proceedings, and may pass such order in reference thereto as it thinks fit.

(4) Nothing in this section shall apply to the orders or proceedings of any Court or Magistrate.

Power to make rules.

21. (1) The ³State Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(a)

section 5 are to be kept

(e) the authority to which returns are to be submitted every month under clause (b) of section 5 and every quarter under section 9 and the forms of such returns and the

¹This word within square brackets was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²This proviso was added by section 3 of the Bengal Motor Spirit Sales Taxation (Amendment) Act, 1954 (West Ben. Act XIV of 1954).

³See foot-note 4 on page 237, ante.

of 1941.]

(Section 22.)

date by which they are to be submitted and the additional particulars required under sub-clause (iv) of clause (b) of section 5 and clause (ii) of section 9 to be contained in those returns ;

¹(ee) the manner of service of notice of demand referred to in sub-section (1) of section 7 ;

(f) the authority to which information referred to in sub-section (2) of section 10 shall be given ;

(g) the authority referred to in section 12 ;

(h) the authority which may accept under sub-section (1) of section 16, payment by way of composition for offences under this Act and the conditions under which such offences may be compounded ;

(i) the authority which may sanction prosecutions under this Act ;

(j) the authority to which an appeal shall lie under sub-section (1) of section 20 and which may exercise powers under sub-section (3) of that section.

(3) In making any rule, the ²State Government may provide that a breach of it shall be punishable with a fine not exceeding fifty rupees.

³22. (1) Nothing in this Act shall be construed to impose or authorise the imposition of a tax on the sale or purchase of motor spirit :—

Imposition of tax on the sale or purchase of motor spirit.

(a) where the sale or purchase takes place outside the State of West Bengal ;

(b) where the sale or purchase takes place in the course of the import of such motor spirit into, or export of such motor spirit out of the territory of India ; or

(c) after the 31st day of March, 1951, where the sale or purchase takes place in the course of inter-State trade or commerce except in so far as Parliament may by law otherwise provide.

(2) The *Explanation* to clause (1) of article 286 of the Constitution shall apply for the interpretation of clause (a) of sub-section (1).

¹This clause was inserted by section 4 of the Bengal Motor Spirit Sales Taxation (Amendment) Act, 1954 (West Ben. Act XIV of 1954).

²See foot-note 4 on page 237, *ante*.

³This new section 22 was inserted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

Bengal Act VI of 1941

THE BENGAL FINANCE (SALES TAX) ACT, 1941.

CONTENTS.

SECTION.

1. Short title, extent and commencement.
2. Definitions.
3. Taxing authorities.
- 3A. Additional Commissioner.
4. Incidence of taxation.
- 4A. Provision against evasion of tax by unregistered dealers.
5. Rate of tax.
6. Tax-free goods.
7. Registration of dealers.
- 7A. Special certificates for dealers liable to pay tax under section 4A.
8. Voluntary registration.
9. List of registered dealers to be published.
10. Payment of tax and returns.
11. Assessment of tax.
12. Refunds.
13. Accounts.
14. Production and inspection of accounts and documents, and search of premises.
15. Delegation of Commissioner's powers.
16. Information to be furnished regarding changes of business.
17. Transfer of business.
18. *Repealed.*
19. Bar to certain proceedings.
20. Appeal, revision and review.
21. Statement of case to High Court.
- 21A. Power of Commissioner to take evidence on oath, etc.
22. Offences and penalties.
23. Compounding of offences.
24. Indemnity.
25. Returns, etc., to be confidential.
26. Power to make rules.
27. Savings.

THE SCHEDULE.

Bengal Act VI of 1941¹

THE BENGAL FINANCE (SALES TAX) ACT, 1941.

			Ben. Act I of 1944.
			West Ben. Act X of 1948.
			West Ben. Act X of 1949.
			West Ben. Act XXIV of 1951.
AMENDED	..	..	West Ben. Act XIX of 1954.
			West Ben. Act IX of 1955.
			West Ben. Act XXII of 1955.
			West Ben. Act II of 1956.
			West Ben. Act XXVII of 1956.
REPEALED AND AMENDED	..	..	West Ben. Act XLVIII of 1950.
ADAPTED	..	..	The Indian Independence (Adap- tation of Bengal and Punjab Acts) Order, 1948.
			The Adaptation of Laws Order, 1950.

[1st July, 1941.]

An Act to impose a general tax on the sale of goods in Bengal.

WHEREAS it is necessary to make an addition to the revenues of Bengal, and for that purpose to impose a general tax on the sale of goods in Bengal ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Finance (Sales Tax) Act, 1941. Short title,
extent and
commencement.

(2) It extends to the whole of ²[West Bengal].

(3) It shall come into force on such date³ as the ⁴State Government may, by notification in the *Official Gazette*, appoint.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(a) “Commissioner” means the Commissioner of Commercial Taxes appointed under sub-section (1) of section 3 ;

¹For Statement of Objects and Reasons. see the *Calcutta Gazette*, dated the 7th November, 1940, Part IVA, page 315 ; and for Report of the Select Committee, see the *Calcutta Gazette*, dated the 13th February, 1941, Part IVA, page 37 ; and for Proceedings of the Bengal Legislative Assembly, see the Bengal Legislative Assembly Proceedings, 1940, Volume LVIII, pages 106-48, 1949-92 and 217-28, *ibid* 1941, Volume LIX—No. 1, pages 34, 138-73, 209-31, 309-41, *ibid* No. 2, pages 305-40, 351-85, 409-66, and *ibid* No. 6, pages 133-41 and for Proceedings of the Bengal Legislative Council, see the Bengal Legislative Council Proceedings, 1941, Volume 1, pages 310-16, 365-92 and *ibid* Volume 2, pages 471-95, 503-41 and 600-33.

²The words within square brackets were substituted for the word “Bengal” by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³The Act was brought into force on the 1st July, 1941, *vide* notification No. 1648F., dated the 30th June, 1941, published in Part I, page 57, of the *Calcutta Gazette*, *Extraordinary*, dated the 1st July, 1941.

⁴The word “State” was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Section 2.)

¹(b) "contract" means any agreement for carrying out for cash or deferred payment or other valuable consideration—

(i) the construction, fitting out, improvement or repair of any building, road, bridge or other immovable property, or

(ii) the installation or repair of any machinery affixed to a building or other immovable property, or

²(iii) the overhaul or repair of—

(1) any motor vehicle,

(2) any sea-going vessel,

(3) any other vessel propelled by internal combustion engine or by any other mechanical means,

(4) any aircraft,

(5) any component or accessory part of any of the items mentioned in paragraphs (1), (2), (3) or (4) above ;

³(1b) "certified dealer" means a dealer to whom a special certificate has been granted under sub-section (3) of section 7A ;

⁴(c) "dealer" means any person who carries on the business of selling goods in West Bengal and includes the Government.

Explanation 1.—A co-operative society or a club or any association which sells goods to its members is a dealer.

Explanation 2.—A factor, a broker, a commission agent, a *del credere* agent, an auctioneer or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of selling goods and who has, in the customary course of business, authority to sell goods belonging to principals is a dealer ;

5*

*

*

*

* *

¹This clause (b) was substituted for the original clause (b) by s. 2(a) of the Bengal Finance (Sales Tax) (Amendment) Act, 1954 (West Ben. Act XIX of 1954).

²This sub-clause was substituted for the previous sub-clause by sec. 2(a) of the Bengal Finance (Sales Tax) (Amendment) Act, 1956 (West Ben. Act XXVII of 1956).

³This clause was inserted by sec. 2 of the Bengal Finance (Sales Tax) (Second Amendment) Act, 1955 (West Ben. Act XXII of 1955).

⁴This clause (c) was substituted for the former clause (c) by sec. 2(b) of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950 (West Ben. Act XLVIII of 1950).

⁵*Explanation 3* was omitted by s. 2(b) of the Bengal Finance (Sales Tax) (Amendment) Act, 1954 (West Ben. Act XIX of 1954).

For Explanation 2 to clause (g) of section 2, substitute the following Explanation, namely:— 1941.

251

“Explanation 2.—A sale shall be deemed to take place in
VOLUME V

Page 251—

In section 2.—

(1) for clause (d), substitute the following clause, namely:—

“(d) “goods” includes all kinds of movable property other than actionable claims, stocks, shares or securities;”;

other than
urities, and
ties, whether
fitting out,
rty;
ade under

(2) omit sub-clause (ii) of clause (h).

(Substituted and omitted by West Ben. Act XIV of 1961,
section 2.)

goods for cash
consideration,
s involved in
not include a
lge.]

[No. 8, dated the 1st August, 1962.]

standing that the seller retains a title to any goods as security for payment of the price, be deemed to be a sale;

³[Explanation 2.—A sale shall be deemed to have taken place in West Bengal if the goods are actually delivered in West Bengal as a direct result of such sale for the purpose of consumption in West Bengal notwithstanding the fact that under the general law relating to the sale of goods the property in the goods has by reason of such sale passed in another State;]

⁴(h) “sale-price” means the amount payable to a dealer as valuable consideration for—

(i) the sale of any goods, less any sum allowed as cash discount according to ordinary trade practice, but including any sum charged for anything done by the dealer in respect of the goods at the time of, or before, delivery thereof, other than the cost of freight or delivery or the cost of installation when such cost is separately charged ; or

(ii) the carrying out of any contract, less such portion as may be prescribed of such amount, representing the usual proportion of the cost of labour to the cost of materials used in carrying out such contract;

¹This clause (d) was substituted for the former clause (d) by s. 2(c) of the Bengal Finance (Sales Tax) (Amendment) Act, 1954 (West Ben. Act XIX of 1954)

²These words within square brackets were substituted for the words “sale” means any transfer of property in goods for money consideration and includes a transfer of property in goods supplied in the execution of a contract but does not include a mortgage, hypothecation, charge or pledge; and any grammatical variations of the expression “sale” shall be construed accordingly’ by s. 2(d), *ibid*.

³This Explanation 2 within square brackets was substituted for the original Explanation by s. 2(d)(ii), of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950 (West Ben. Act XLVIII of 1950).

⁴This clause (h) was substituted for the former clause (h) by s. 2(e) of the Bengal Finance (Sales Tax) (Amendment) Act, 1954 (West Ben. Act XIX of 1954).

(Section 3.)

¹(i) "turnover" used in relation to any period means the aggregate of the sale-prices or parts of sale-prices receivable, or if a dealer so elects, actually received by the dealer during such period after deducting the amounts, if any, refunded by the dealer in respect of any goods returned by the purchaser within such period :

Provided that an election as aforesaid once made shall not be altered except with the permission of the Commissioner and on such terms and conditions as he may think fit to impose :

²Provided further that where before or after the date of the coming into force of clause (f) of section 2 of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950, the calculation of the turnover for any period prior to such date was or is made on the basis of the sale prices or parts of sale prices receivable during such period, the calculation shall not be called in question merely on the ground that it was or is so made; and no return furnished, no assessment made, no proceedings (including in particular proceedings for the recovery of any tax or penalty) taken, no order passed and no notice issued whether before or after such date shall be called in question on the ground that it was or is based on turnover so calculated ;

West Ben.
Act
XLVIII of
1950.

³(j) "year" used in relation to any particular dealer means the year by reference to which, according to a declaration made by that dealer, the accounts of that dealer are ordinarily maintained in his books, and where no such declaration is made, the year commencing on the first day of January and reckoned according to the British calendar :

Provided that a registered ⁴[or certified] dealer shall not change his year except with the previous permission of the prescribed authority and except on such terms and conditions as may be determined by such authority.

Taxing
authori-
ties.

3. (1) For carrying out the purposes of this Act, the ⁵State Government may appoint a person to be Commissioner of Commercial Taxes, together with such other persons to assist him as it thinks fit.

¹This clause (i) was substituted for the original clause by s. 2(f) of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950 (West Ben. Act XLVIII of 1950).

²This further proviso was added by s. 2 of the Bengal Finance (Sales Tax) (Amendment) Act, 1955 (West Ben. Act IX of 1955).

³Clause (j) was substituted for the original clause by s. 2(g) of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950 (West Ben. Act XLVIII of 1950).

⁴These words within square brackets were inserted by s. 2(b) of the Bengal Finance (Sales Tax) (Amendment) Act, 1956 (West Ben. Act XXVII of 1956).

⁵See foot-note 4 on page 249, *ante*.

of 1941.]

(Section 3A.)

(2) Persons appointed under sub-section (1) shall exercise such powers as may be conferred, and perform such duties as may be required, by or under this Act.

Act XLV
of 1860.

(3) All persons appointed under sub-section (1) shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

¹3A. (1) The State Government may appoint ²[one or more persons to be an Additional Commissioner or Additional Commissioners of Commercial Taxes]. Additional Commissioner.

(2) ³[An Additional Commissioner of Commercial Taxes] shall have such of the powers and shall be entitled to exercise such of the duties of the Commissioner as the State Government may, by notification in the *Official Gazette*, direct.

(3) References to the Commissioner in this Act, shall, in respect of the powers and duties referred to in sub-section (2), be deemed to include references to ⁴[an Additional Commissioner of Commercial Taxes.]

(4) The Commissioner may transfer to, or withdraw to himself from, ⁵[an Additional Commissioner of Commercial Taxes] any case or matter with which ⁶[an Additional Commissioner of Commercial Taxes] is competent to deal in exercise or performance of the powers or duties referred to in sub-section (2) ⁶[, or may transfer any such case or matter from an Additional Commissioner of Commercial Taxes competent to deal with the same to another Additional Commissioner of Commercial Taxes so competent.]

(5) ⁷[An Additional Commissioner of Commercial Taxes] shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

¹This section 3A was inserted by s. 2 of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1951 (West Ben. Act XXIV of 1951).

²These words within square brackets were substituted for the words "a person to be the Additional Commissioner of Commercial Taxes (hereinafter referred to as the Additional Commissioner)" by s. 3 (a) of the Bengal Finance (Sales Tax) (Second Amendment) Act, 1955 (West Ben. Act XXII of 1955).

³These words within square brackets were substituted for the words "The Additional Commissioner" by s. 3 (b), *ibid*.

⁴These words within square brackets were substituted for the words "the Additional Commissioner" by s. 3 (c), *ibid*.

⁵These words within square brackets were substituted for the words "the Additional Commissioner" by s. 3(d)(i) of the Bengal Finance (Sales Tax) (Second Amendment) Act, 1955 (West Ben. Act XXII of 1955).

⁶These words within square brackets were added by s. 3(d)(ii), *ibid*.

⁷These words within square brackets were substituted for the words "The Additional Commissioner" by s. 3(e), *ibid*.

(Section 4.)

Incidence
of tax-
ation.

4. (1) ¹[With] effect from such date as the ²State Government may, by notification in the *Official Gazette*, appoint, being not earlier than thirty days after the date of the said notification, every dealer whose gross turnover during the year immediately preceding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax under this Act on all sales effected after the date so notified :

Provided that—

*For sub-section (1) of section 4 (including the proviso thereof), substitute the following sub-section, namely:—

(1) With effect from the date on which this Act comes into force in the territories transferred from the State of Bihar to the State of West Bengal by section 3 of the Bihar and West Bengal (Transfer of Territories) Act, 1956, every dealer whose gross turnover during the year immediately preceding such date exceeded the taxable quantum shall be liable to pay tax under this Act on all sales effected after such date.”

[Substituted by West Ben. Act XXVI of 1957, sub-section (2) of section 3.]

[No. 2, dated the 1st August, 1958.]
after the date of such expiry as may be prescribed, and on the expiry of this latter period his liability to pay tax shall cease.

⁴(4) Every dealer whose liability to pay tax under this Act has ceased under the provisions of sub-section (3), shall, if his gross turnover calculated from the commencement of any year again exceeds the taxable quantum at any time within such year, be liable to pay such tax on the expiry of two months from the date on which such gross turnover again first exceeds the taxable quantum on all sales effected after such expiry.

(5) In this Act the expression “taxable quantum” means—

(a) in relation to any dealer who imports for sale any goods into ⁵[West Bengal,] or ⁶manufactures or produces any goods for sale, 10,000 rupees; or

¹The word within square brackets was substituted for the words and figures “Subject to the provisions of sections 5 and 6 and with” by s. 3(a) of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950 (West Ben. Act XLVIII of 1950).

²See foot-note 4 on page 249, *ante*.

³Sub-section (2) was substituted for the original sub-section by s. 3(b) of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950, (West Ben. Act XLVIII of 1950).

⁴Sub-section (4) was substituted for the original sub-section by s. 3(c) *ibid*.

⁵See foot-note 2 on page 249, *ante*.

⁶The word “himself” was omitted by s. 3(d) of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950 (West Ben. Act XLVIII of 1950).

of 1941.]

(Sections 4A, 5.)

1* * * *

(c) in relation to any other dealer, 50,000 rupees.

4A. If in the opinion of the State Government there is any appreciable evasion of tax in respect of any goods, then the State Government may issue a notification specifying such goods (hereinafter referred to as notified goods), and with effect from the date of such notification, every dealer who imports into West Bengal, or manufactures or produces such goods for sale and who is not liable to pay tax under sub-section (2) or sub-section (4) of section 4 or whose liability has ceased under sub-section (3) of that section shall be liable to pay tax on all sales of such notified goods:

Provision against evasion of tax by unregistered dealers.

Provided that, in the case of cottage industry products, the State Government may, by general or special order, exempt from the provisions of this section dealers selling notified goods produced by himself or by members of his family.

In section 5,—

- (1) in sub-section (1), for the words “three quarters of an anna” substitute the words “five naye paise”; and
- (2) in sub-clause (i) of clause (b) of sub-section (2), for the words “three quarters of an anna” substitute the words “five naye paise”.

Rate of tax.

(Substituted by West Ben. Act XIX of 1957, section 2.)

Pages 255-257—

In section 5,—

- (1) for sub-section (1), substitute the following sub-section, namely:—

“(1) The tax payable by a dealer under this Act shall be levied on his taxable turnover at the rate of—

- (a) one half of one per centum of such part of his taxable turnover as represents sales of gold;

(a) his turnover during that period on—

- (i) the sale of goods declared tax-free under section 6;

¹Clause (b) was omitted by s. 4 of the Bengal Finance (Sales Tax) (Second Amendment) Act, 1955 (West Ben. Act XXII of 1955).

²This new section was inserted by s. 5, *ibid*.

³The word “three-quarters” within square brackets was substituted for the words “one half” by s. 4(a) of the West Bengal Finance (Amendment and Repeal) Act, 1948 (West Ben. Act X of 1948).

⁴This proviso was added by s. 5(a) of the Bengal Finance (Sales Tax) (Third Amendment) Act, 1955 (West Ben. Act II of 1955).

⁵These words within square brackets were substituted for the words “that part of a dealer’s gross turnover” by s. 6(a) of the Bengal Finance (Sales Tax) (Second Amendment) Act, 1955 (West Ben. Act XXII of 1955).

(b) one per centum of such part of his taxable turnover as represents sales of gold ornament manufactured by him, where he charges separately for the value of gold and the cost of manufacture;

in. Act VI

(c) two per centum of such part of his taxable turnover as represents sales of goods referred to in section 14 of the Central Sales Tax Act, 1956;

74 of 1956.

(d) seven per centum of such part of his taxable turnover as represents sales of goods included in Schedule II;

(e) five per centum of such part of his taxable turnover as represents sales of goods other than those

Page 258—

In sub-section (2) of section 5,—

(1) in clause (a), for sub-clauses (ii), (iii) and (iv), substitute the following sub-clauses, namely:—

“(ii) sales to a registered dealer of goods of the class or classes specified in the certificate of registration of such dealer, as being intended for re-sale by him in West Bengal or for use by him in the manufacture in West Bengal of goods for sale, and of containers and other materials for the packing of goods of the class or classes so specified;

(iii) sales to a registered dealer engaged in the business of raising coal, of goods required for use by him directly in connection with the raising of coal in West Bengal;

(iv) sales to any undertaking supplying electrical energy to the public under a license or sanction granted or deemed to have been granted under the Indian Electricity Act, 1910, of goods required for use by it in the generation or distribution of such energy either wholly in West Bengal or partly in West Bengal and partly in any place outside West Bengal;”;

9 of 1910.

(2) to clause (a), add the following proviso, namely:—

“Provided that deduction on account of sales referred to in sub-clause (ii), sub-clause (iii) or sub-clause (iv) shall be allowed to the dealer who sells the goods only when he can furnish in the prescribed manner a declaration containing prescribed particulars in the prescribed form obtainable from the prescribed authority duly filled up and signed by the registered dealer to whom, or by the owner or representative of the undertaking to which, the goods are sold.”.

by s. 4(a)
1950 (West

(Substituted and added by West Ben. Act XIV of 1961,
section 3.)

West Bengal
(1949) and
Sales Tax)
(1950).

[No. 8, dated the 1st August, 1962.]

remaining after making the deductions and...
by sub-clauses (i) to (vi) of clause (a) from that
part of the turnover of a dealer which is taxable
at the rate of five per centum of the turnover.”.

by s. 2(b) of the
55 (West Ben. Act

(Substituted, added and inserted by West Ben. Act XIII of 1959
section 3.)

21

[No. 5, dated the 1st May, 1961.]

After section 5, insert the following section, namely:—

Penalty
for un-
authorised
use of
goods by
registered
dealer or
undertaking.

5A. (1) If any registered dealer or undertaking, after purchasing any goods for any of the purposes referred to in sub-clauses (ii), (iii) and (iv) of clause (a) of sub-section (2) of section 5, makes use of the same for any other purpose the prescribed authority may, after giving such registered dealer or the owner of such undertaking a reasonable opportunity of being heard, by an order in writing direct that he shall pay by way of penalty a sum not exceeding double the amount of the tax which could have been levied under this Act in respect of the sale of the goods concerned.

(2) Any penalty imposed under sub-section (1) shall be paid by the registered dealer or undertaking, as the case may be, into a Government Treasury or the Reserve Bank of India by such date as may be specified by the prescribed authority in a notice issued for this purpose and the date to be so specified shall not be less than fifteen days from the date of service of such notice:

Provided that the prescribed authority may, for reasons to be recorded in writing, extend the date of such payment or allow such registered dealer or owner, as the case may be, to pay the penalty imposed in such number of instalments as the prescribed authority may determine.

(3) Any amount of penalty that remains unpaid after the date specified in the notice referred to in sub-section (2) shall be recoverable as an arrear of land revenue payable to the Collector.”.

(Inserted by West Ben. Act XIV of 1961, section 4.)

[No. 8, dated the 1st August, 1962.]

In section 6, for the words “the Schedule” wherever they occur, substitute the words “Schedule I”.

(a).
the sale Tax-free
subject to goods.
responding

(Substituted by West Ben. Act XIII of 1959, section 4.)

[No. 5, dated the 1st May, 1961.]

Official Gazette not less than three months’ notice of its intention so to do, may by like notification add to the Schedule, and thereupon the Schedule shall be deemed to be amended accordingly.

7. (1) No dealer shall, while being liable to pay tax [under section 4 of this Act], carry on business as a dealer unless he has been registered and possesses a registration certificate.

Registration
of
dealers.

(2) Every dealer required by sub-section (1) to be registered shall make application in such behalf in the prescribed manner to the prescribed authority.

¹This Explanation was added by s. 2(c) of the Bengal Finance (Sales Tax) (Third Amendment) Act, 1955 (West Ben. Act II of 1955).

²This sub-section was added by s. 6(b) of the Bengal Finance (Sales Tax) (Second Amendment) Act, 1955 (West Ben. Act XXII of 1955).

³See foot-note 4 on page 249 ante.

⁴These words and figures within square brackets were substituted for the words “under this Act” by s. 5(a) of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950 (West Ben. Act XLVIII of 1950).

Pages 257-258—

[Ben. Act VI

In section 7,—

(1) in sub-section (2), after the words “prescribed authority”; add the words “and such application shall be accompanied by a declaration in the prescribed form duly filled and signed by the dealer specifying the class or classes of goods for the purposes of sub-clause (ii) of clause (a) of sub-section (2) of section 5”;

application for
with such rules
and grant him a
in which shall
be of sub-clause

(2) in clause (ii) of sub-section (4a), omit the words “sub-clause (ii) of”.

(Added and omitted by West Ben. Act XIV of 1961,
section 5.)

be amend any
ation furnished

[No. 8, dated the 1st August, 1962.]

may, for good or sufficient reasons,
demand from a registered dealer or from a person who has applied
for registration under this Act,

¹[(i) reasonable security for the proper payment of tax payable
by him under this Act;

(ii) reasonable security for the proper custody and use of
the forms referred to in the proviso to sub-clause
(ii) of clause (a) of sub-section (2) of section 5 which
may be given to him by the prescribed authority.]

(5) When any dealer has been convicted or has paid composition money under section 23, in respect of any contravention of sub-section (1) of this section, the Commissioner shall register such dealer and grant him a certificate of registration, and such registration shall take effect as if it had been made under sub-section (3) of this section on the dealer's application.

²(6) When—

(a) any business in respect of which a certificate has been granted to a dealer on an application made, has been discontinued ⁴* * * or

(b) a dealer has ceased to be liable to pay tax under section 4 of this Act,

the Commissioner shall cancel the registration.

¹Sub-section (4a) was inserted by s. 3(a) of the Bengal Finance (Sales Tax) (Amendment) Act, 1954 (West Ben. Act XIX of 1954).

²These words within square brackets were substituted for the words “reasonable security for the proper payment of tax payable under this Act”, by s. 3 of the Bengal Finance (Sales Tax) (Amendment) Act, 1955 (West Ben. Act IX of 1955).

³This sub-section (6) was substituted for the original sub-section by s. 5(b) of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950 (West Ben. Act XLVIII of 1950).

⁴The words “or transferred” were omitted by s. 3(b) of the Bengal Finance (Sales Tax) (Amendment) Act, 1954 (West Ben. Act XIX of 1954).

The Bengal Finance (Sales Tax) Act, 1941.

of 1941.]

Page 259-

In the Explanation to sub-section (1) of section 8, for the word "the Schedule" substitute the words "Schedule I".

(Substituted by West Ben. Act XIII of 1959, section 5.)

pay tax
; a special

Special
certificates
for dealers
liable to
pay tax
under sec-
tion 4A.

[No. 5, dated the 1st May, 1961.]

West Ben.
Act XXII
of 1955.

Provided that a dealer carrying on business of selling such goods at the commencement of the Bengal Finance (Sales Tax) (Second Amendment) Act, 1955, shall be allowed three months from such commencement to obtain a special certificate.

(2) Every dealer required by sub-section (1) to obtain a special certificate shall make application in this behalf in the prescribed manner to the prescribed authority.

(3) If the said authority is satisfied that an application for special certificate is in order he shall, in accordance with such rules as may be prescribed, grant a special certificate to the applicant in the prescribed form.

(4) The Commissioner may, from time to time, amend any special certificate in accordance with the information furnished under section 16 or otherwise received.

(5) The Commissioner may, for good or sufficient reasons, demand from a dealer or person, who has applied for or has already obtained a special certificate under this Act or is found to be importing or attempting to import notified goods into West Bengal for sale without being registered or without obtaining or applying for a special certificate, reasonable security for the proper payment of tax payable by him under this Act.

(6) When any dealer has been convicted or has paid composition money under section 23, in respect of any contravention of the provisions of this section the Commissioner shall grant a special certificate to such dealer and such special certificate shall take effect as if it had been granted under sub-section (3) on the dealer's application.

(7) When any business, in respect of which a special certificate has been granted to a dealer on an application made, has been discontinued, the Commissioner shall cancel such special certificate.

8. (1) Any dealer whose gross turnover during a year exceeds 10,000 rupees may, notwithstanding that he may not be liable to pay tax under section 4, apply in the prescribed manner to the prescribed authority for registration under this Act. Voluntary registration.

²[Explanation.—A dealer may apply for registration under this section although he deals exclusively in one or more classes of goods specified in the first column of the Schedule.]

¹This new section was inserted by s. 7 of the Bengal Finance (Sales Tax) (Second Amendment) Act, 1955 (West Ben. Act XXII of 1955).

²This Explanation to section 8(1) was added by s. 6 of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950 (West Ben. Act XLVIII of 1950).

(Sections 9, 10.)

(2) The provisions of sub-sections (3) and (4) and clause (a) of sub-section (6) of section 7 shall apply in respect of applications for registration under this section.

(3) Every dealer who has been registered upon application made under this section shall, for so long as his registration remains in force, be liable to pay tax under this Act.

(4) The registration of a dealer upon application made under this section shall be in force for a period of not less than three complete years and shall remain in force thereafter unless cancelled under the provisions of this Act.

(5) Subject to the provisions of sub-section (4), a dealer registered upon application made under this section may apply in the prescribed manner not less than six months before the end of a year to the authority which granted him his certificate of registration for the cancellation of such registration to take effect at the end of the year in which the application for such cancellation is made; and the said authority shall, unless the dealer is liable to pay tax under section 4, cancel the registration accordingly.

List of registered dealers to be published.

19. The Commissioner shall, as soon as may be after the commencement of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950, publish in the *Official Gazette*, a list of the names and addresses of the registered dealers together with a description of the goods covered by the certificate of the registration, and thereafter shall in like manner from time to time publish—

West Ben. Act XLVIII of 1950.

(a) such particulars of any dealer who is subsequently registered or whose registration certificate is amended or whose registration is cancelled as soon as may be after such registration or cancellation, and

(b) a consolidated list embodying the modification made in the first list published under this section.

Payment of tax and returns.

10. (1) Tax payable under this Act shall be paid in the manner hereinafter provided at such intervals as may be prescribed.

(2) Such dealers as may be required so to do by the Commissioner by notice served in the prescribed manner and every ²[registered or certified] dealer shall furnish such returns by such dates and to such authority as may be prescribed :

* * * * *

(3) Before any ²[registered or certified] dealer furnishes the returns required by sub-section (2), he shall, in the prescribed manner, pay into a Government Treasury or the Reserve Bank of

¹This section 9 was substituted for the original section by s. 7 of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950 (West Ben. Act XLVIII of 1950).

²These words within square brackets were substituted for the word "registered" by sec. 8 of the Bengal Finance (Sales Tax) (Second Amendment) Act, 1955 (West Ben. Act XXII of 1955).

³The proviso to sub-section (2) of section 10 was omitted by s. 8, *ibid.*

of 1941.]

(Section 11.)

India the full amount of tax due from him under this Act according to such returns, and shall furnish along with the returns a receipt from such Treasury or Bank showing the payment of such amount.

(4) If any dealer discovers any omission or other error in any return furnished by him, he may at any time before the date prescribed for the furnishing of the next return by him furnish a revised return; and if the revised return shows a greater amount of tax to be due than was shown in the original return, it shall be accompanied by a receipt showing payment in the manner provided in sub-section (3) of the extra amount.

11. ¹(1) If no returns are furnished by a ²[registered or certified] dealer in respect of any period by the prescribed date, or if the Commissioner is not satisfied that the returns furnished are correct and complete, the Commissioner shall, within ³[eighteen months] after the expiry of such period, proceed in such manner as may be prescribed to assess to the best of his judgment the amount of the tax due from the dealer and in making such assessment shall give the dealer a reasonable opportunity of being heard; and in the case of failure by a ²[registered or certified] dealer ⁴[to submit in respect of any period a return accompanied by a receipt from a Government Treasury or the Reserve Bank of India, as required under sub-section (3) of section 10, by the prescribed date,] the Commissioner may, if he is satisfied that the default was made without reasonable cause, direct that the dealer shall pay by way of penalty in addition to the amount of the tax so assessed a sum not exceeding one and a half times that amount. Assessment of tax.

(2) If upon information which has come into his possession the Commissioner is satisfied that any dealer, ⁵[who has been liable to pay tax under this Act in respect of any period ⁶(but has failed to get himself registered or to obtain a special certificate, as the case may be,) the Commissioner, shall] ⁷* * * * * proceed in such manner as may be prescribed to assess to the best

¹Sub-section (1) was substituted for the original sub-section by section 5(a) of the West Bengal Finance (Sales Tax) Amendment Act, 1949 (West Ben. Act X of 1949).

²These words within square brackets were substituted for the word "registered" by sec. 9(a) of the Bengal Finance (Sales Tax) (Second Amendment) Act, 1955 (West Ben. Act XXII of 1955).

³The words "eighteen months" within square brackets were substituted for the words "twelve months" by s. 9(a) (i), of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act 1950 (West Ben. Act XLVIII of 1950).

⁴These words, brackets and figures within square brackets were substituted for the words "to submit a return in respect of any period by the prescribed date" by s. 9(a) (ii), *ibid.*

⁵The words within square brackets were substituted for the words beginning with "who imports" and ending with "such period" by s. 9(b), *ibid.*

⁶These words within chain brackets were substituted for the words "but has failed to get himself registered," by sec. 9(b), of the Bengal Finance (Sales Tax) (second amendment) Act, 1955 (West Ben. Act XXII of 1955).

⁷The words "after giving the dealer a reasonable opportunity of being heard" were omitted by section 5(b) (ii), of the West Bengal Finance (Sales Tax) Amendment Act, 1949 (West Ben. Act X of 1949).

In the second proviso to sub-section (2a) of section 11, after the words "under section 21" insert the words "or in pursuance of any other order of any court". [Ben. Act VI 1941]

(Inserted by West Ben. Act XIII of 1959, section

[No. 5, dated the 1st May, 1961.]

the dealer in respect of such assessment shall give the dealer a reasonable opportunity of being heard; and the Commissioner may [if he is satisfied that the default was made without reasonable cause,] direct that the dealer shall pay by way of penalty in addition to the amount of tax so amount.

In section 11,—

- (1) in sub-section (2), omit the words beginning with "and the Commissioner may if he is satisfied" and ending with "a sum not exceeding one and a half times that amount";
- (2) in sub-section (3), for the words "under any of the provisions of this section," substitute the words "under the provisions of sub-section (1).";
- (3) for sub-section (4a), substitute the following sub-section, namely:—

"(4B) Where any dealer is in default in making payment of any tax payable under this Act after the assessment of such tax has been made and the date for the payment thereof has expired, the Commissioner may, by notice issued in this behalf, direct that in addition to the amount of arrears of such tax, such sum not exceeding that amount as the Commissioner may specify in the notice, shall be paid by the dealer by way of penalty, by such date as may be specified in the notice, and the amount of any such tax or penalty which remains unpaid after the date so specified in the notice shall be recoverable as an arrear of land revenue payable to the Collector:

Provided that if the Commissioner is satisfied that the default in making payment of the tax has been due to circumstances beyond the control of the dealer, he may, by order recording reasons for so doing, exempt the dealer from payment of any penalty."

(Omitted and substituted by West Ben. Act XIV of 1961, section 6.)

[No. 8, dated the 1st August, 1962.]

"This further proviso was added by s. 4(1) of the Bengal Finance (Sales Tax) (Amendment) Act, 1955 (West Ben. Act IX of 1955).

"The words "together with the penalty directed to be paid under that sub-section" were omitted by section 5(c)(i) of the West Bengal Finance (Sales Tax) Amendment Act, 1949 (West Ben. Act X of 1949).

"The words within square brackets were substituted for the words "shall be paid" by section 5(c)(ii), *ibid.*

West Ben.
Act
XLVIII
of 1950.

of 1941.]

(Section 11.)

¹(4) Any amount of tax or penalty which remains unpaid after the date specified in the said notice shall be recoverable as an arrear of land-revenue as if it were payable to the Collector :

Provided that where any proceedings for the recovery as an arrear of land-revenue of any tax or penalty remaining unpaid as aforesaid have been taken as if it were payable to a person other than the Collector, such proceedings shall be deemed to have been validly taken and if they are still pending may be validly so continued :

²Provided further that where security has been furnished by a dealer in pursuance of a demand ³[under sub-section (4a) of section 7 or under sub-section (5) of section 7A], the Commissioner may,—

(i) in cases coming ⁴[under clause (i) of sub-section (4a) of section 7 or under sub-section (5) of section 7A], for good and sufficient reasons, realize any tax or penalty remaining unpaid as aforesaid or part thereof by ordering forfeiture of the whole or any part of the security ;

(ii) in cases coming under clause (ii) ⁵[of sub-section (4a) of section 7], order forfeiture of the whole or part of the security, if there has been negligence or wilful default as to the proper custody or use of the forms mentioned in that clause.

⁶(4A) Where any proceedings for the recovery as an arrear of land-revenue of any tax or penalty remaining unpaid has been commenced under sub-section (4) and the amount of tax or penalty is subsequently modified, enhanced or reduced in consequence of any assessment made or order passed on appeal, revision or review under section 20, the Commissioner may in such manner and within such period as may be prescribed inform the dealer and such authority by whom or under whose order the recovery is to be made as may be prescribed in this behalf and thereupon such proceedings may be continued as if the amount of tax or penalty as so modified, enhanced or reduced had been substituted for the tax or penalty which was to be recovered under sub-section (4).

¹This sub-section (4) was substituted for the original sub-section (4) by s. 4(a) of the Bengal Finance (Sales Tax) (Amendment) Act, 1954 (West Ben. Act XIX of 1954).

²This further proviso was added by s. 4(2) of the Bengal Finance (Sales Tax) (Amendment) Act, 1955 (West Ben. Act IX of 1955).

³These words within square brackets were substituted for the words "under sub-section (4a) of section 7" by sec. 9(c) (i) of the Bengal Finance (Sales Tax) (Second Amendment) Act, 1955 (West Ben. Act XXII of 1955).

⁴These words within square brackets were substituted for the words "under clause (i) of that sub-section" by sec. 9(c) (ii), *ibid.*

⁵These words within square brackets were substituted for the words "of that sub-section" by sec. 9(c) (iii), *ibid.*

⁶This sub-section was inserted by sec. 3 of the Bengal Finance (Sales Tax) (Amendment) Act, 1956 (West Ben. Act XXVII of 1956).

*After section 11, insert the following section, namely:—

Action taken and proceedings commenced or continued in the trade name of a business.

“11A. Notwithstanding anything contained in any law for the time being in force, in respect of any business carried on under a trade name,—

(1) action may be taken under this Act in any matter connected with the purposes of this Act including the realisation of taxes or penalty, and proceedings for the recovery of any such taxes or penalty may be commenced or continued under any law against the person owning the business, and

(2) no action taken or proceedings commenced before the commencement of the West Bengal Tax Laws (Amendment) Act, 1959, shall be called in question merely on the ground that such action was taken or such

After section 12, insert the following section, namely:—

Person to whom, manner in which and conditions subject to which tax to be refunded under section 15 of Act 74 of 1956.

12A. (1) Where a tax has been levied under this Act in respect of the sale of any goods referred to in section 14 of the Central Sales Tax Act, 1956, and such goods are subsequently sold in the course of inter-State trade or commerce, the dealer by whom the tax so levied was paid may, within twelve months from the date on which the tax was paid, make an application in writing to the Commissioner for the refund of the tax under the provisions of clause (b) of section 15 of the Central Sales Tax Act, 1956. 74 of 1956

(2) On receipt of an application under sub-section (1), the Commissioner shall, after giving the applicant an opportunity of being heard and after recording reasons for so doing, make an order either granting or rejecting the application wholly or in part:

Provided that no order for refunding any tax shall be made unless it is proved to the satisfaction of the Commissioner that—

(a) such tax was actually paid within twelve months preceding the date of the application under sub-section (1), and

(b) the goods in respect of the sale whereof the tax is ordered to be refunded, were subsequently re-sold in the course of inter-State trade or commerce.

(3) When an application for refund is granted under sub-section (2), the tax ordered to be refunded shall be refunded to the applicant, *mutatis mutandis* in the manner referred to in sub-section (1) of section 12.”

(Inserted by West Ben. Act XIII of 1959, section 7.)

[No. 5, dated the 1st May, 1961.]

(Amendment) —
*This section 12 was substituted for the original section 12 by s. 10 of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950 (West Ben. Act XLVIII of 1950).

*These words within square brackets were substituted for the word “registered” by sec. 10 of the Bengal Finance (Sales Tax) (Second Amendment) Act, 1955 (West Ben. Act XXII of 1955).

of 1941

(Sections 14, 15.)

14. ¹(1) The Commissioner may, subject to such conditions as may be prescribed, require any dealer—

Production and inspection of accounts and documents, and search of premises.

(a) to produce before him any accounts, registers or documents,

(b) to furnish any information, relating to the stock of goods of, or purchases, sales or deliveries of goods by, the dealer or relating to any other matter,

as may be deemed necessary for the purposes of this Act.

¹(2) (a) All accounts, registers and documents relating to the stocks of goods of, or purchases, sales and deliveries of goods by, any dealer; and

(b) all goods kept in any place of business of any dealer shall at all reasonable times be open to inspection by the Commissioner.

(3) If the Commissioner has reason to suspect that any dealer is attempting to evade payment of any tax under this Act, he may, for reasons to be recorded in writing, seize such accounts, registers or documents of the dealer as may be necessary, and shall grant a receipt for the same, and shall retain the same only for so long as may be necessary for examination thereof or for a prosecution.

(4) For the purposes of sub-section (2) or sub-section (3) the Commissioner may enter and search any place of business of any dealer ²[or any other place where the Commissioner has, upon information received, reason to believe that the dealer keeps or is for the time being keeping any accounts, registers or documents of his business.]

15. Subject to such restrictions and conditions as may be prescribed, the Commissioner may by order in writing delegate any of his powers under this Act [except those under ³* sub-section (2) of section 22] to any person appointed under section 3 to assist him.

Delegation of Commissioner's powers.

¹Sub-sections (1) and (2) were substituted for the original sub-sections (1) and (2) by s. 11(a) and (b) of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950 (West Ben. Act XLVIII of 1950).

*These words within square brackets were added by s. 11(c), *ibid.*

²The words and figures "section 18 and" were omitted by s. 12, *ibid.*

Page 266—

In section 16, after the words "within the prescribed time", insert the words "and in the prescribed manner". section (2)

(Inserted by West Ben. Act XIV of 1961, section 7.)

[No. 8, dated the 1st August, 1962.]

any part
or effects or
ownership
of the business] or

(b) discontinues his business or changes his place of business or opens a new place of business, or

[(c) changes the name or nature of his business or effects any change in the class or classes of goods in which he carries on his business and which are specified in his certificate of

Page 266—

In section 17, after the words "transferred absolutely" insert the words "by sale, gift, bequest, inheritance or otherwise". prescribed authority representative

(Inserted by West Ben. Act XIII of 1959, section 8.)

[No. 5, dated the 1st May, 1961.]

registered dealer
or in some other name, the transferee or the lessee shall for all the purposes of this Act (except for liabilities under this Act already discharged by such dealer) be deemed to be and to have always been registered (in the case of a lease for so long as the lease subsists) as if the registration certificate of such dealer had initially been granted to the transferee or the lessee; and the transferee or the lessee shall on application to the Commissioner be entitled to have the registration certificate amended accordingly.

⁴18. (Power to Commissioner to determine disputes. Repealed by West Ben. Act XLVIII of 1950, section 15.)

¹These words within square brackets were inserted by s. 13(a) of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950 (West Ben. Act XLVIII of 1950).

²This clause (c) was substituted for the original clause by s. 13(b), *ibid.*

³This section 17 was substituted for the former s. 17 by s. 5 of the Bengal Finance (Sales Tax) (Amendment) Act, 1954 (West Ben. Act XIX of 1954).

⁴Section 18 shall be deemed to have been retrospectively repealed as from the commencement of the Bengal Finance (Sales Tax) (West Bengal Amendment) Ordinance, 1950 (West Ben. Ord. X of 1950), and

(1) All proceedings which were pending before the Commissioner of Commercial Taxes immediately before the commencement of the Bengal Finance (Sales Tax) (West Bengal Amendment) Ordinance, 1950, under section 18 shall be deemed to have been discharged as from the date of such commencement.

(2) No order passed before the commencement of the Bengal Finance (Sales Tax) (West Bengal Amendment) Ordinance, 1950, by a person appointed under sub-section (1) of section 3 to assist the Commissioner of Commercial Taxes shall be deemed to be or to have been invalid merely on the ground that such order determined or purported to determine directly or incidentally any question which the Commissioner of Commercial Taxes should have determined under section 18 or shall be questioned by or in any court, tribunal or authority merely on such ground.

[Vide section 15 of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950 (West Ben. Act XLVIII of 1950).]

of 1941.

(Sections 19, 20.)

19. Save as is provided in section 21, no assessment made and no order passed under this Act or the rules made thereunder by the Commissioner or any person appointed under section 3 to assist him shall be called into question in any Civil Court, and save as is provided in section 20, no appeal or application for revision or review shall lie against any such assessment or order.

Bar to certain proceedings.

Pages 267-268—

In section 20,—

- *(1) in sub-section (1), for the words "the Commissioner" substitute the words "the said authority"; and
- (2) in sub-section (4), after the words "under section 3", insert the words "or section 3A".

or appeal within sixty days of the receipt of a notice of appeal, revision and review.

(Substituted and inserted by West Ben. Act XIII of 1959, section 9.)
[No. 5, dated the 1st May, 1961.]

aid authority as the

the appellate authority, in disposing of any appeal under sub-section (1), may—

prescribed,

- (a) confirm, reduce, enhance or annul the assessment, or ;
- (b) set aside the assessment and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed.

(3) Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Commissioner upon application or of his own motion may revise any ¹[assessment made or order passed] under this Act or the rules thereunder by a person appointed under section 3 to assist him, and subject as aforesaid, the Board of Revenue may, in like manner, revise any ²[assessment made or order passed] by the Commissioner :

Provided that before rejecting any application for the revision of any such order the Commissioner or the Board of Revenue, as the case may be, shall consider it and shall record reasons for such rejection :

³[Provided further that no application for revision shall lie to the Commissioner in respect of any assessment if an appeal lies under sub-section (1) to the Commissioner in respect of such assessment.]

¹This sub-section (1) was substituted for the original sub-section by section 6(a) of the West Bengal Finance (Sales Tax) Amendment Act, 1949 (West Ben. Act X of 1949).

²These words within square brackets were inserted by s. 16(a) of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950 (West Ben. Act XLVIII of 1950).

³These words within square brackets were substituted for the words "order passed" by s. 16(b)(i), *ibid.*

⁴This proviso was added by s. 16(b)(ii), *ibid.*

(Section 21.)

¹(4) Subject to such rules as may be prescribed, any assessment made or order passed under this Act or the rules made thereunder by any person appointed under section 3 may be reviewed by the person passing it upon application or of his own motion.

(5) Before any order is passed under this section which is likely to affect any person adversely, such person shall be given reasonable opportunity of being heard.

²*Explanation.*—In this section “assessment” includes imposition of penalty.

Statement
of case to
High
Court.

21. (1) Within sixty days from the passing by the Board of Revenue of any order under sub-section (3) of section 20 affecting any liability of any dealer to pay tax under this Act, such dealer may, by application in writing accompanied by a fee of one hundred rupees, require the Board to refer to the High Court any question of law arising out of such order.

(2) If, for reasons to be recorded in writing, the Board of Revenue refuses to make such reference, the applicant may, within thirty days of such refusal, either—

(a) withdraw his application (and if he does so, the fee paid shall be refunded), or

(b) apply to the High Court against such refusal.

(3) If upon the receipt of an application under clause (b) of sub-section (2), the High Court is not satisfied of the correctness of the Board's decision, it may require the Board to state the case and refer it, and on the receipt of such requisition, the Board shall state and refer the case accordingly.

(4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, it may refer the case back to the Board of Revenue to make such additions thereto or alterations therein as the Court may direct in that behalf.

(5) The High Court upon the hearing of any such case shall decide the question of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the Board of Revenue a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Board shall dispose of the case accordingly.

(6) Where a reference is made to the High Court under this section, the costs (including the disposal of the fee) shall be in the discretion of the Court.

(7) The payment of the amount, if any, of tax due in accordance with the order of the Board of Revenue in respect of which an application has been made under sub-section (1) shall not be stayed pending the disposal of such application or any reference

¹This sub-section (4) was substituted by s. 16(c), of the Bengal Finance (Sales Tax) (West Bengal amendment) Act, 1950 (West Ben. Act XLVIII of 1950.)

²This “Explanation” was added by section 6(b) of the West Bengal Finance (Sales Tax) Amendment Act, 1949 (West Ben. Act X of 1949).

of 1941.]

(Sections 21A, 22.)

Pages 269-270—

In sub-section (1) of section 22,—

(1) for clause (b), substitute the following clause, namely:—

“(b) submits a false return: or”.

(2) in clause (cc), omit the words “sub-clause (ii) of”.

(3) omit the proviso.

(Substituted and omitted by West Ben. Act XIV of 1961, section 8.)

[No. 8, dated the 1st August, 1962.]

any person appointed to assist him under sub-section (1) of section 3 shall be deemed to be a “judicial proceeding” within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code.

Act XLV
of 1960.

duced as
refunded

to assist Power of
purposes of Commis-
sioner to
take
evidence
on oath,
etc.

examining

nesses ;

22. (1) Whoever—

(a) carries on business as a dealer in contravention of sub-section (1) of section 7 ; or

²(aa) carries on business as a dealer without furnishing the security demanded under sub-section (4a) of section 7 ; or

³(aaa) sells notified goods in contravention of sub-section (1) of section 7A ; or

³(aaaa) fails to furnish the security demanded under sub-section (5) of section 7A ; or

(b) fails, without sufficient cause, to submit any return as required by sub-section (2) of section 10 or submits a false return ; or

(c) being a registered dealer, falsely represents when purchasing any class of goods, that goods of such class are covered by his certificate of registration ; or

⁴(cc) has in his possession any prescribed form referred to in the ⁵[proviso to sub-clause (ii)] of clause (a) of sub-section (2) of section 5, not obtained by him or by his

Offences
and
penalties.

¹This section 21A was inserted by s. 17 of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950 (West Ben. Act XLVIII of 1950).

²Clause (aa) was inserted by s. 5(1) of the Bengal Finance (Sales Tax) (Amendment) Act, 1955 (West Ben. Act IX of 1955).

³These clauses (aaa) and (aaaa) were inserted by section 11 of the Bengal Finance (Sales Tax) (second Amendment) Act, 1955 (West Ben. Act XXII of 1955).

⁴Clause (cc) was inserted by s. 6(a) of the Bengal Finance (Sales Tax) (Amendment) Act, 1954 (West Ben. Act XIX of 1954).

⁵These words within square brackets were substituted for the words “proviso to paragraph (ii)” by s. 5(2)(a) of the Bengal Finance (Sales Tax) (Amendment) Act, 1955 (West Ben. Act IX of 1955).

Pages 270-271—

For sub-section (1) of section 23, substitute the following sub-section, namely:—

“(1) Subject to such conditions as may be prescribed, any person alleged to have committed an offence under any of the clauses other than clause (a), clause (b), clause (c), clause (cc), clause (d) or clause (g) of sub-section (1) of section 22, or under any rules made under this Act, may, either before or after the commencement of any proceedings against him in respect of such offence, at his option, compound such offence by paying to the Commissioner such sum not exceeding ten thousand rupees as may be determined by the Commissioner.”.

(Substituted by West Ben. Act XIV of 1961, section 9.)

[No. 8, dated the 1st August, 1962.]

✓ [shall be punishable with simple imprisonment which may extend to six months or with fine or with both] and when the offence is a continuing one, with a daily fine not exceeding fifty rupees during the period of the continuance of the offence :

²Provided that no prosecution for an offence against this Act shall be instituted in respect of the same facts in respect of which a penalty has been imposed [and paid] under section 11.

(2) No Court shall take cognizance of any offence under this Act, or under the rules made thereunder except with the previous sanction of the Commissioner, and no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any such offence.

(3) All offences punishable under this Act shall be cognisable and bailable.

Compound-
ing of
offences.

⁵23. (1) Subject to such conditions as may be prescribed, the Commissioner may accept, from any person alleged to have committed an offence under sub-section (1) of section 22 or under any rules made under this Act, either before or after the commencement of any proceedings against such person in respect of such offence, by way of composition for such offence, a sum not exceeding five thousand rupees or where the offence alleged to have been committed is under clause (a) or clause (b) of that

¹The comma and word “except” was omitted by s. 5(2)(b), of the Bengal Finance (Sales Tax) (Amendment) Act, 1955 (West Ben. Act IX of 1955).

²These words within square brackets were substituted for the words “shall be punishable with fine not exceeding one thousand rupees” by s. 18 of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950 (West Ben. Act XLVIII of 1950).

³This “proviso” was added by section 7 of the West Bengal Finance (Sales Tax) Amendment Act, 1949 (West Ben. Act X of 1949).

⁴These words within square brackets were inserted by s. 6(b) of the Bengal Finance (Sales Tax) (Amendment) Act, 1954 (West Ben. Act XIX of 1954).

⁵This section 23 was substituted for the original section by s. 19 of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950 (West Ben. Act XLVIII of 1950).

of 1941.]

(Sections 24, 25.)

sub-section, not exceeding double the amount of the tax which would have been payable by such person had he complied with the provisions of the Act, whichever is greater.

(2) On payment in full of such sum as may be determined by the Commissioner under sub-section (1)—

- (a) no proceedings shall be commenced against such person as aforesaid ; and
- (b) if any proceedings have been already commenced against such person as aforesaid, such proceedings shall not be further proceeded with.

24. No suit, prosecution or other legal proceedings shall lie against any servant of the ¹[Government] for anything which is in good faith done or intended to be done under this Act or the rules made thereunder. Indemnity.

25. (1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act other than proceedings before a Criminal Court, shall, save as provided in sub-section (3), be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as aforesaid, be entitled to require any servant of the ¹[Government] to produce before it any such statement, return, account, document or record or any part thereof, or to give evidence before it in respect thereof. Returns, etc., to be confidential.

I of 1872.

(2) If, save as provided in sub-section (3), any servant of the ¹[Government] discloses any of the particulars referred to in sub-section (1), he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine.

²(3) Nothing in this section shall apply to the disclosure—

- ³(a) of any of the particulars referred to in sub-section (1)—
 - (i) for the purposes of a prosecution under the Indian Penal Code in respect of any such statement, return, accounts, document or evidence, or for the purposes of a prosecution under this Act,
 - (ii) in any suit or proceeding in a civil court to which the State Government or any person appointed under this Act is a party and which relates to any matter arising out of any proceeding under this Act,
 - (iii) to any officer of Government where it is necessary to make such disclosure to him for the purposes of this Act ; or

Act XLV
of 1860.

¹This word within square brackets was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²This sub-section (3) was substituted for the original sub-section by section 8 of the West Bengal Finance (Sales Tax) Amendment Act, 1949 (West Ben. Act X of 1949).

³This clause was substituted for the previous clause by s. 4 of the Bengal Finance (Sales Tax) (Amendment) Act, 1956 (West Ben. Act XXVII of 1956).

(Section 26.)

- (b) of such facts, to an officer of the Central Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax imposed by it.

Power to
make
rules.

26. (1) The ¹State Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

- ²(a) The portion referred to in sub-clause (i) of clause (h) of section 2 ;
- ³(aa) The authority referred to in the proviso to clause (j) of section 2 ;
- (b) the further period after the date of expiry of three consecutive years referred to in sub-section (3) of section 4 ;
- ⁴(bb) the particulars to be contained in a declaration under sub-clause (ii) of clause (a) of sub-section (2) of section 5, the form of such declaration, the authority from which such form shall be obtainable and the manner in which such declaration is to be furnished ;
- (c) the taxable quantum for particular classes of dealers under clause (b) of sub-section (5) of section 4 ;
- ⁵(d) the other sales, turnover in respect of which may be deducted from a dealer's gross turnover in computing his taxable turnover as defined in section 5 ;
- (e) the authority to which applications for registration under section 7 or section 8 ⁶[, or for special certificate under section 7A] shall be made ;
- (f) the procedure for, and other matters incidental to, the registration of dealers and the granting of certificates of registration, and the form of such certificates under section 7 or section 8 ;
- ⁶(ff) the procedure for and other matters incidental to the granting of special certificates under section 7A and the form of such certificates ;
- (g) the intervals at which, and the manner in which, the tax under this Act shall be payable under section 10 ;

¹See footnote 4 on p. 249, *ante*.

²This clause (a) was substituted for the original clause by s. 20(a) of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950 (West Ben. Act XLVIII of 1950).

³This clause (aa) was inserted by s. 20(b), *ibid*.

⁴This clause (bb) was inserted by s. 20(c), *ibid*.

⁵These words within square brackets were inserted by s. 12(a) of the Bengal Finance (Sales Tax) (Second Amendment) Act, 1955 (West Ben. Act XXII of 1955).

⁶This clause was inserted by s. 12(b), *ibid*.

of, 1941-1.

(Section 27.)

- (h) the returns to be furnished under sub-section (2) of section 10, and dates by which, and the authority to which, such returns shall be furnished ;
- (i) the date by which returns for any period are to be furnished and the procedure to be followed for assessment under section 11;
- (j) the manner in which refunds under section 12 shall be made ;
- (k) the accounts and forms thereof required by section 13 ;
- (l) the conditions under which the production of accounts or documents or the furnishing of information may be required under sub-section (1) of section 14 ;
- (m) the restrictions and conditions subject to which the Commissioner may delegate his powers under section 15 ;
- (n) the authority to which information shall be furnished under section 16 ;
- (o) the manner in which, and the authority to which, appeals against assessment may be preferred under section 20 ;
- (p) the procedure for, and other matters (including fees) incidental to, the disposal of appeals and applications for revisions and reviews under section 20 ;
- (q) the conditions under which offences may be compounded under section 23 ;
- (r) the manner in which, and the time within which, applications shall be made, information furnished and notices served, under this Act ;
- (s) the sacred books referred to in item 21 in the first column of the Schedule ;
- ¹(t) any other matter required to be prescribed.

(3) In making any rule the ²State Government may direct that a breach thereof shall be punishable with fine not exceeding five hundred rupees, and when the offence is a continuing one, with a daily fine not exceeding twenty-five rupees during the continuance of the offence.

³27. (1) Notwithstanding anything contained in this Act,— Savings.

- (a) a tax on sale or purchase of goods shall not be imposed under this Act—
- (i) where such sale or purchase takes place outside the State of West Bengal ;

¹This clause (t) was inserted by s. 20(d) of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950 (West Ben. Act XLVIII of 1950).

²See footnote 4 on p. 249, *ante*.

³Section 27 was inserted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

(The Schedule.)

(ii) where such sale or purchase takes place in the course of import of the goods into the goods

In section 27,—

(1) in clause (b) of sub-section (1), omit the words "except in so far as Parliament may by law otherwise provide"; and

(2) omit sub-section (2).

(Omitted by West Ben. Act XIX of 1957, section 3.)

[No. 2, dated the 1st August, 1958.]

Pages 274-278—

In the Schedule,—

(1) for the words "The Schedule" substitute the words "Schedule I",

(2) in item 20, for the word "quinine" substitute the words "cinchona alkaloids and their salts", and

(3) after Schedule I, add the following Schedule, namely :—

"Schedule II.

in sealed

[See section 5(1)(d).]

Serial No.

Description of Goods.

1. Motor vehicles, including chassis of motor vehicles, motor tyres and tubes and spare parts of motor vehicles.
2. Motor cycles and cycle combinations, motor scooters, motorettes and tyres, tubes and spare parts of motor cycles, motor scooters, and motorettes.
3. Refrigerators and air conditioning plants and component parts thereof. in sealed
4. Wireless reception instruments and apparatus, radios and radio gramophones, electrical valves, accumulators, amplifiers and loudspeakers and spare parts and accessories thereof.
5. Cinematographic equipment including cameras; projectors and sound recording and reproducing equipment; lenses, films and parts and accessories required for use therewith.
6. Photographic and other cameras and enlargers; lenses, films and plates, paper and cloth, and other parts and accessories required for use therewith. of the Bengal XIX of 1954) retrospective (nt) Act, 1955
7. All clocks, time pieces and watches and parts thereof. ngal Finance Act XXII of
8. Iron and steel safes and almirahs.

of 1941.]

Serial No.

Description of Goods.

9. All arms including rifles, revolvers and pistols, and ammunition for the same.
10. Cigarette cases and lighters.
11. Dictaphone and other similar apparatus for recording sound and spare parts thereof.
12. Sound transmitting equipment including telephones and loudspeakers and spare parts thereof.
13. Typewriters, tabulating machines, calculating machines and duplicating machines and parts thereof.
14. Binoculars, telescopes and opera glasses.
15. Gramophones and component parts thereof and records."

(Substituted and added by West Ben. Act XIII of 1959, section 10.)

[No. 5, dated the 1st May, 1961.]

17. Kerosene oil .. ..	....
18. Tobacco for <i>hookah</i> ³ [, that is to say, tobacco-paste ready for use in <i>hookah</i>.]	....
4 * * * ..	....
20. Quinine ⁵* * ..	....

¹Item 10 "Mustard oil, rape oil and mixtures of mustard and rape oil" item 10A "Mustard seed and rape seed", which were inserted by the Government of Bengal, Finance Department, Notification No. 2588-F., dated the 2nd December, 1942, published in the *Calcutta Gazette*, 1942, Part I, page 2728, and items 19 "Matches", 24 "Coal and Coko", 28 "Coal Gas", together with the entries relating to this item in cloumn 2, 30 "Newspapers" and 31 "Raw hides and raw skins" were omitted by sec. 9(a) of the West Bengal Finance (Sales Tax) Amendment Act, 1949 (West Ben. Act X of 1949).

²The item—

"16. *Dhooties, lungies* and *sarees*

When the sale price of a *dhoti, lungi* or *saree* does not exceed such amount as the State Government may fix in respect of *dhooties, lungies* or *sarees*, as the case may be, by notification in the *Official Gazette* :

Provided that the State Government may fix different amounts for *dhooties, lungies* or *sarees* of different sizes."

was omitted by sec. 5 of the Bengal Finance (Sales Tax) (Amendment) Act, 1956 (West Ben. Act XXVII of 1956).

³These words within square brackets were added by sec. 7(b) of the Bengal Finance (Sales Tax) (Amendment) Act, 1954 (West Ben. Act XIX of 1954).

⁴Vide foot-note 1 above.

⁵The words "and febrifuge" in item 20 were omitted by sec. 9(b) of the West Bengal Finance (Sales Tax) Amendment Act, 1949 (West Ben. Act X of 1949).

(The Schedule.)

1	2
21. Text-books approved for Primary Classes (I-IV) and such sacred books as may be prescribed.
1* * *
2* * *
3* * *
25. Country liquor (including <i>tari</i> and <i>pachwai</i>), potable foreign liquor (including medicated wines), <i>ganja</i> , excise opium (excluding preparations of opium), <i>bhang</i> and <i>charas</i>
26. Water, but not aerated on mineral waters when sold in bottles or sealed containers.
27. Electrical energy
2* * *
29. Motor spirit, that is to sav.	
<p><i>In the Schedule, in item 29, omit the words “, and which has a flashing point below 76 degrees Fahrenheit”.</i></p> <p><i>(Omitted by West Ben. Act XIX of 1957, section 4.)</i></p> <p><i>[No. 2, dated the 1st August, 1958.]</i></p> <p><i>flashing point below 76 degrees Fahrenheit.</i></p>	
2* * *

¹The item “22 Bullion and specie.....” was omitted by sec. 13(b) of the Bengal Finance (Sales Tax) (Second Amendment) Act, 1955 (West Ben. Act XXII of 1955).

²The Item—

“23. Gold ornaments manu- When sold by the manufacturer who charges factured from bullion or separately for the value of the gold and specie. the cost of manufacture.”

was omitted by sec. 3 of the Bengal Finance (Sales Tax) (Third Amendment) Act, 1955 (West Ben. Act II of 1956).

³vide foot-note 1 on page 275, ante.

of 1941.]

(The Schedule.)

1	2
<p>1* * *</p>	<p>....</p>
<p>*[32. Raw Jute] ..</p>	<p>....</p>
<p>*33. Plain paper, commonly known as "Cartridge paper" sold by Government Treasuries through the agency of licensed stamp vendors.</p>	<p>....</p>
<p>*34. Eggs </p>	<p>....</p>
<p>5* * *</p>	<p>....</p>
<p>*36. Sago, that is to say, any article sold in the market by the name of sago.</p>	<p>....</p>
<p>*37. Charkha </p>	<p>....</p>
<p>*38. Cotton </p>	<p>....</p>
<p>7, 8* * *</p>	<p>....</p>
<p>7, 8* * *</p>	<p>....</p>

¹Vide foot-note 1 on page 275, *ante*.

²This new item 32 was inserted by the Government of Bengal, Finance Department, Notification No. 1358F., dated the 2nd June, 1942, published in the *Calcutta Gazette*, dated the 11th June, 1942, Part I, page 1498.

³Item 33 was added by Notification No. 370-F.T., dated the 4th October, 1945, published in the *Calcutta Gazette*, dated the 11th October, 1945, Part I, page 1666.

⁴Item 34 was added by Notification No. 9520-Taxn., dated the 24th June, 1946, published in the *Calcutta Gazette*, dated the 4th July, 1946, Part I, page 1025.

⁵Item 35 "Fresh fruits", which was added by Notification No. 5836 Taxn., dated the 12th May, 1947, published in the *Calcutta Gazette*, dated the 22nd May, 1947, Part I, page 965, was omitted by sec. 9(a) of the West Bengal Finance (Sales Tax) Amendment Act, 1949 (West Ben. Act X of 1949).

⁶Item 36 was added by Notification No. 67-F.T., dated the 7th October, 1947, published in the *Calcutta Gazette*, dated the 16th October, 1947, Part I, Pages 225-26.

⁷Items 37, 38, 39, 40 and 41 were added by Notification No. 608-F.T., dated the 29th April, 1948, published in the *Calcutta Gazette*, dated the 6th May, 1948, Part I, page 573.

⁸Items 39 and 40 "Handmade paper" and "Fuel wood" respectively were omitted by section 9(a) of the West Bengal Finance (Sales Tax) Amendment Act, 1949 (West Ben. Act X of 1949) (*vide* foot-note 7, above).

(The Schedule.)

1	2
¹ 41. Handloom woven—	
(a) <i>Gamchas</i> and
(b) <i>Khaddar</i> sold by dealers approved by the ² State Government.
** * *
⁴ 43. Mustard oil, rape oil and mixtures of mustard and rape oil.
⁴ 44. Matches
⁴ 45. Newspapers
⁵ 46. Mustard seed and rape seed.

¹This new item 41 was substituted for the existing item 41—"Handloom woven cloth not being *dhooties*, *lungies* or *sarees*" (vide foot-note 7 on page 277, *ante*, by sec. 9(c) of the West Bengal Finance (Sales Tax) Amendment Act, 1949 (West Ben. Act X of 1949).

²See foot-note 4 on p. 249, *ante*.

³Item 42—"Charcoal", which was added by Notification No. 1464-F.T., dated the 9th September, 1948, published in the *Calcutta Gazette*, dated the 23rd September, 1948, Part I, page 1278, was omitted by sec. 9(a) of the West Bengal Finance (Sales Tax) Amendment Act, 1949 (West Ben. Act X of 1949).

⁴Items 43, 44 and 45 were added by Notification No. 1475-F.T., dated the 4th July, 1949, published in the *Calcutta Gazette*, dated the 14th July, 1949, Part I, page 1175.

⁵Item 46 was added by Notification No. 270-F.T., dated the 18th February, 1953, published in the *Calcutta Gazette*, dated the 26th February, 1953, Part I, page 80.

Bengal Act IX of 1941¹

THE BENGAL COURT OF WARDS (AMENDMENT) ACT, 1941.

REPEALED IN PART West Ben. Act VII of 1948.

[16th October, 1941.]

An Act further to amend the Court of Wards Act, 1879.

Ben. Act
IX of
1879.

WHEREAS it is expedient further to amend the Court of Wards Act, 1879, for the purposes and in the manner hereinafter appearing;

It is hereby enacted as follows :—

1. This Act may be called the Bengal Court of Wards **Short title.**
(Amendment) Act, 1941.

2. [*Amendment of section 3 of Bengal Act IX of 1879.—Repealed by the West Bengal Repealing and Amending Act, 1948 (West Bengal Act VII of 1948).*]

3. [*Repeal of section 56.—Repealed by the West Bengal Repealing and Amending Act, 1948 (West Bengal Act VII of 1948).*]

4. The amendments made by sections 2 and 3 shall have **Retrospective effect.**
effect in respect of all suits or proceedings including proceedings in execution which are pending on the date of commencement of this Act.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 10th July, 1941, Part IVA, page 192; for Proceedings of the Assembly, see the proceedings of the meeting of the Bengal Legislative Assembly held on the 30th July, 1941; for proceedings of the Council, see the Proceedings of the meetings of the Bengal Legislative Council held on the 11th and the 18th August, 1941.

Bengal Act XI of 1941¹

THE BENGAL RAW JUTE TAXATION ACT, 1941.

AMENDED	..	..	West Ben. Act XXXV of 1954.
ADAPTED	..	.. }	The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
			The Adaptation of Laws Order, 1950.

(27th November, 1941.)

An Act to provide for the levy of a tax on raw jute purchased by the occupiers of jute-mills and by shippers of jute.

WHEREAS it is expedient to provide for the levy of a tax on raw jute purchased by the occupiers of jute-mills and by shippers of jute for the purpose of carrying out measures for the stabilisation of jute prices and for furthering the interests of the growers of jute in the ²[State] and of the jute industry generally ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Raw Jute Taxation Act, 1941.

(2) It extends to the whole of ³[West Bengal].

(3) It shall come into force on such date⁴ as the ⁵[State] Government may, by notification in the *Official Gazette*, appoint.

Short
title,
extent and
com-
mence-
ment.

2. In this Act, unless there is anything repugnant in the subject or context—

Defi-
nitions.

(1) "jute" means the plant known botanically as belonging to the *genus corchorus*, and includes all the species of that *genus* whether known commonly as *pat*, *kosta*, *nalua* or by any other name, and also means the plant known botanically as *hibiscus cannabinus* and commonly as *mesta* ;

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 10th July, 1941 ; Part IVA, page 198 ; the Report of the Select Committee, which was published in the *Calcutta Gazette*, dated the 21st August, 1941, Part IVA, page 228, was presented to the Assembly on the 13th August, 1941 ; for proceedings of the Assembly, see the proceedings of the meetings of the Bengal Legislative Assembly held on the 30th July, 13th and 18th August, 1941 ; for proceedings of the Council, see the proceedings of the meetings of the Bengal Legislative Council held on the 28th August, 4th, 9th and 10th September, 1941.

²The word within square brackets was substituted for the word "Province" by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

³The words within square brackets were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁴The Act came into force on the 1st day of January, 1942, vide notification No. 547J., dated the 31st December, 1941, published in the *Calcutta Gazette*, Extraordinary, dated the 1st January, 1942.

⁵The word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Section 3.)

- (2) "jute-mill" means a factory as defined in, or declared to be a factory under, the Factories Act, 1934, which is engaged wholly or in part in the manufacture of jute products; XXV of 1934.
- (3) "maund" means the weight equivalent to a standard maund as specified under the Standards of Weight Act, 1939; IX of 1939.
- (4) "occupier of a jute-mill" means the person who has ultimate control over the affairs of the jute-mill:
- Provided that, where the affairs of a jute-mill are entrusted to a managing agent, such agent shall be deemed to be the occupier of the jute-mill;
- (5) "prescribed" means prescribed by rules made under this Act;
- (6) "purchased" means purchased, delivered and accepted;
- (7) "quarter" means a period of three months ending on 31st March, 30th June, 30th September or 31st December in any year;
- (8) "raw jute" means the fibre of jute which has not been subjected to any process of spinning or weaving and includes jute cuttings, whether loose or packed in drums or bales;
- (9) "shipper of jute" means any person who purchases raw jute and supplies it himself or by an agent to any person including himself outside ²[West Bengal].

Levy of
tax.

3. (1) Except as otherwise expressly provided in this Act, there shall be charged and levied a tax of ³[four annas] on every maund of raw jute purchased by the occupier of a jute-mill or purchased and despatched outside ²[West Bengal] by any means of transit by a shipper of jute and such tax shall be payable to the ⁴[State] Government by the occupier of every jute-mill and by every shipper of jute.

(2) No tax shall be leviable under this Act on any raw jute in respect of which such tax has already been paid or to which the provisions of sub-section (3) apply:

Provided that the burden of proving that such tax has already been paid shall be upon the person who claims the benefit of this sub-section.

¹The Factories Act, 1934 (XXV of 1934), was repealed and re-enacted by the Factories Act, 1948 (LXIII of 1948).

²See foot-note 3 on page 281, *ante*.

³These words within square brackets were substituted for the words "two annas" by s. 2 of the Bengal Raw Jute Taxation (Amendment) Act, 1954 (West Ben. Act XXXV of 1954).

⁴See foot-note 5 on page 281, *ante*.

of 1941.]

(Sections 4—6.)

(3) No tax shall be leviable under this Act on any raw jute purchased under a contract entered into before the date of commencement of this Act.

4. (1) No premises shall, after the commencement of this Act, be used as a jute-mill unless such premises have been registered by the occupier of the jute-mill and every such registration shall be renewed annually, by the occupier of such jute-mill:

No premises to be used as a jute-mill unless registered.

Provided that, where any premises are, at the commencement of this Act, used as a jute-mill, the occupier of such jute-mill shall be allowed two months from such commencement to effect such registration.

(2) An application for registration or renewal thereof under this section shall be made in such form and to such authority as may be prescribed, and the prescribed authority shall, in the prescribed manner and form, maintain a record of every registration and renewal thereof.

(3) The registration of any jute-mill may, with the previous sanction of the ¹[State] Government, be cancelled by the registering authority if the premises registered have ceased to be used as a jute-mill.

5. (1) No person shall, after the commencement of this Act, carry on business as a shipper of jute unless his name has been registered as such and every such registration shall be renewed annually by every shipper of jute:

No person to carry on business as a shipper of jute without registration of his name.

Provided that any person carrying on business as a shipper of jute at the commencement of this Act shall be allowed two months from such commencement to effect such registration.

(2) An application for registration or renewal thereof under this section shall be made in such form and to such authority as may be prescribed, and the prescribed authority shall, in the prescribed manner and form, maintain a record of every registration and renewal thereof.

(3) The registration of any shipper of jute may, with the previous sanction of the ¹[State] Government, be cancelled by the registering authority if the registered person has ceased to carry on, or has sold or otherwise transferred his interest in the business in respect of which his name was registered.

6. Every occupier of a jute-mill shall in respect of such jute-mill—

(a) keep books of account relating to the purchase of raw jute in the prescribed form; and

Occupiers of jute-mills to keep books of account and submit returns.

¹See foot-note 5 on page 281, ante.

(Sections 7, 8.)

- (b) submit every quarter to such authority as may be prescribed a return in the prescribed form and before the prescribed date showing—
- (i) the quantity of raw jute held in stock in the jute-mill at the beginning of the preceding quarter ;
 - (ii) the quantity of raw jute purchased by him for the jute-mill during the preceding quarter ;
 - (iii) the quantity of raw jute despatched from the jute-mill during the preceding quarter ;
 - (iv) the quantity of raw jute held in stock in the jute-mill at the end of the preceding quarter ; and
 - (v) such other particulars necessary for the purposes of this Act as may be prescribed.

Shippers
of jute
to keep
books of
account
and sub-
mit re-
turns¹

7. Every shipper of jute shall, in respect of his business and at each place at which he carries on such business—

- (a) keep books of account relating to the purchase and despatch by any means of transit of raw jute in the prescribed form ; and
- (b) submit every month to such authority as may be prescribed a return in the prescribed form and before the prescribed date showing—
 - (i) the quantity of raw jute held in stock by him at the beginning of the preceding month ;
 - (ii) the quantity of raw jute purchased by him during the preceding month ;
 - (iii) the quantity of raw jute despatched by him outside ¹[West Bengal] by any means of transit during the preceding month ;
 - (iv) the quantity of raw jute held in stock by him at the end of the preceding month ; and
 - (v) such other particulars necessary for the purposes of this Act as may be prescribed.

Payment
of tax and
receipt for
such pay-
ment.

8. Before submitting in each period the return referred to in clause (b) of sections 6 and 7 the occupier of a jute-mill or shipper of jute, as the case may be, shall pay into a Government Treasury or the Reserve Bank of India the full amount of the tax due under this Act in respect of the raw jute purchased by him, or purchased and despatched outside ¹[West Bengal] by any means of transit by him, as the case may be, according to such return, and shall furnish along with the return a receipt from such treasury or bank showing payment of such amount.

¹See foot-note 3 on page 281, *ante*.

of 1941.]

Page 285—

(Sections 9, 10.)

*After section 9, insert the following section, namely:—

“9A. Notwithstanding anything contained in any law for the time being in force, in respect of any business carried on under a trade name,—

Action taken and proceedings commenced or continued in the trade name of a business.

(1) action may be taken under this Act in any matter connected with the purposes of this Act including the realisation of taxes or penalty, and proceedings for the recovery of any such taxes or penalty may be commenced or continued under any law against the person owning the business, and

(2) no action taken or proceedings commenced before the commencement of the West Bengal Tax Laws (Amendment) Act, 1959, shall be called in question merely on the ground that such action was taken or such proceedings were commenced in the trade name of the business.”.

(Inserted by West Ben. Act VII of 1959, section 2.)

[No. 4, dated the 1st June, 1959.]

and completeness of the Act, as amended by him.

Provided further that the authority referred to in clause (b) of sections 6 and 7 may, for reasons to be recorded in writing, extend the date of such payment.

(2) If the amount of the tax due and the penalty (if any) directed to be paid under sub-section (1) are not paid within the period mentioned in that sub-section or within the period of any extension of time allowed under the second proviso to the said sub-section, the authority referred to in clause (b) of sections 6 and 7 may direct that the occupier of the jute-mill or the shipper of jute shall pay in addition to the amount of the tax and penalty (if any) so unpaid a sum not exceeding the amount of the tax by way of penalty or further penalty as the case may be.

(3) If default is made in making the payment of the amount of tax due or any penalty directed to be paid under sub-section (1) within the period mentioned in that sub-section or within the period of any extension of time allowed under the second proviso to the said sub-section or in making the payment of any penalty directed to be paid under sub-section (2), it shall be recoverable from the person from whom it is due as an arrear of land revenue.

10. The authority referred to in clause (b) of sections 6 and 7 shall, in the prescribed manner, refund to the occupier of a jute-mill or a shipper of jute applying in this behalf any amount of the tax paid by such occupier or shipper of jute in excess of the amount due from him under this Act either by cash payment or, at the option of such occupier or shipper of jute, by deduction of such excess from the amount of the tax due in respect of any other period.

Refunds.

(Sections 11—13.)

Powers of
inspection,
entry
and
search.

11. (1) Any person empowered by the ¹[State] Government in this behalf may, for the purposes of this Act—

- (a) require any occupier of any jute-mill or shipper of jute to produce before such person all accounts, vouchers and other documents relating to stocks, purchases, receipts and despatches of raw jute, and to furnish any other information relating to such stocks, purchases, receipts and despatches and every such occupier and shipper of jute shall comply with such requisition; and
- (b) inspect such accounts, vouchers and documents of, and the raw jute held in stock by, such occupier or shipper of jute.

(2) Any such person specially empowered by the ¹[State] Government in this behalf may enter and search, at any time, by day any building, vessel, vehicle or place in which he has reason to believe that any occupier of a jute-mill or shipper of jute holds any stock of raw jute.

(3) All searches made under sub-section (2) shall be made in accordance with the provisions of the Code of Criminal Procedure, Act V of 1898.

Returns,
etc., to
be con-
fidential.

12. No person to whom any returns under this Act are submitted or who makes an inspection under section 11 shall, save with the previous sanction of the ¹[State] Government, disclose any information obtained from any such return or inspection otherwise than departmentally or for the purposes of a prosecution under the Indian Penal Code in respect of any such return, or of any account, voucher or other document inspected, or for the purposes of a prosecution under this Act. Act XLV of 1860.

Penalties.

13. Any person who—

- (a) being the occupier of a jute-mill fails to register such jute-mill as required by section 4; or
- (b) being a shipper of jute fails to register his name as required by section 5; or
- (c) fails to keep books of account as required by clause (a) of section 6 or 7 as the case may be; or
- (d) fails without sufficient cause to submit any return as required by clause (b) of section 6 or 7, as the case may be, or submits an incorrect or incomplete return, or fails to submit a receipt for the full amount of the tax due as required by section 8; or
- (e) fraudulently evades the payment of any tax due under this Act; or

¹See foot-note 5 on page 281, ante.

of 1941.]

(Sections 14—19.)

- (f) refuses to comply with a requisition under clause (a) of sub-section (1) of section 11 or obstructs any officer making an inspection or a search under section 11; or
- (g) discloses any information in contravention of the provisions of section 12; or
- (h) acts in contravention of any of the provisions of this Act,

shall, on conviction, be punishable with fine which may extend to one thousand rupees, and in the case where the failure, evasion or contravention is a continuing one, with a further fine which may extend to one hundred rupees for every day after the first during which such failure, evasion or contravention continues subsequent to such conviction.

Institution of proceedings.

14. No proceedings in respect of any offence under this Act shall be instituted except with the previous sanction of such authority as may be prescribed and upon complaint by a person empowered under section 11.

Offences to be bailable.

15. All offences punishable under this Act shall be bailable.

Power to compound offences.

16. (1) The prescribed authority may accept from any person charged with any offence punishable under this Act or any rule made thereunder, by way of composition for such offence, payment of a sum of money not exceeding five hundred rupees or double the amount of the tax payable, whichever is greater.

(2) If payment by way of composition is accepted under sub-section (1), the accused, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of such offence.

Jurisdiction to try offences.

17. No Magistrate other than a Presidency Magistrate or a Magistrate of the first class shall try an offence punishable under this Act.

Officers to be deemed public servants.

18. All persons empowered to act under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Act XLV of 1860.

Indemnity.

19. No suit, prosecution or other legal proceedings shall lie against any servant of the ¹[Government] for anything which is in good faith done or intended to be done under this Act.

¹The word within square brackets was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Sections 20—22.)

Limita-
tion of
suits and
proceed-
ings.

20. No suit shall be instituted against the ¹[State], and no suit, prosecution or other proceedings shall be instituted against a servant of the ²[Government] in respect of anything done or intended to be done under this Act, unless the suit, prosecution or other proceeding has been instituted within six months from the date of the act complained of.

Appeal
and

21. (1) Any person aggrieved by any order under this Act may appeal within sixty days from the date of such order—

(a) in Calcutta as defined in clause (11) of section 3 of the Calcutta Municipal Act, 1923,³ and the districts of Hooghly, Howrah and 24-Parganas, to such authority as may be prescribed, and

Ben. Act
III of
1923.

(b) elsewhere—

(i) to the Commissioner of the Division if such order is passed by the Collector of a district, and

(ii) to the Collector of the district, if such order is passed by any officer other than the Collector.

(2) Every order passed in appeal under this section shall, subject to the powers of revision conferred by sub-section (3), be final.

(3) The prescribed authority may, at any time, either of its own motion or on application, call for and examine the record of any order passed or the proceedings recorded by any officer or person subordinate to such authority; for the purpose of satisfying itself as to the legality or propriety of such order, or as to the regularity of such proceedings, and may pass such order in reference thereto as it thinks fit.

(4) Nothing in this section shall apply to the orders or proceedings of any Court or Magistrate.

Power to
make
rules.

22. (1) The ⁴[State] Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(a) the form of application for registration and renewal thereof under sub-section (2) of section 4 or sub-section (2) of section 5, the authority to which such applications shall be made, the manner and form in which such authority shall maintain a record of registrations and renewals ;

¹See footnote 2 on page 281, *ante*.

²See foot-note 1 on page 287, *ante*.

³The Calcutta Municipal Act, 1923 (Ben. Act III of 1923), was repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951).

⁴See footnote 5 on page 281, *ante*.

of 1941.]

(Section 23.)

- (b) the forms in which books of account shall be kept under clause (a) of sections 6 and 7 ;
- (c) the authority to which returns are to be submitted under clause (b) of sections 6 and 7, the forms of such returns, the date before which they are to be submitted and the particulars which may be necessary for the purposes of this Act other than those specified in the said clauses to be contained in those returns ;
- (d) the manner in which refunds under section 10 shall be made ;
- (e) the authority which may, under section 14, accord previous sanction to the institution of proceedings ;
- (f) the authority which may, under sub-section (1) of section 16, accept payment by way of composition for offences under this Act ; and
- (g) the authority to which an appeal shall lie under clause (a) of sub-section (1) of section 21 and the authority which may exercise powers under sub-section (3) of that section.

(3) In making any rule under sub-section (1) or sub-section (2), the ¹[State] Government may provide that any person committing a breach thereof shall, on conviction, be punishable with fine which may extend to one hundred rupees.

23. (1) Notwithstanding anything contained in this Act,—

(a) a tax on the sale or purchase of raw jute shall not be imposed under this Act—

(i) where such sale or purchase takes place outside the State of West Bengal ; or

(ii) where such sale or purchase takes place in the course of import of the goods into, or export of the goods out of, the territory of India ;

(b) a tax on the sale or purchase of raw jute shall not, after the 31st day of March, 1951, be imposed where such sale or purchase takes place in the course of inter-State trade or commerce except in so far as Parliament may by law otherwise provide.

(2) The *Explanation* to clause (1) of article 286 of the Constitution shall apply for the interpretation of sub-clause (i) of clause (a) of sub-section (1).

Imposition of tax on the sale or purchase of raw jute.

¹See foot-note 5 on page 281, *ante*.

²Section 23 was inserted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

Bengal Act IV of 1942¹

THE BENGAL CRIMINAL LAW (INDUSTRIAL AREAS) AMENDMENT ACT, 1942.

ADAPTED .. { The Indian Independence (Adaptation of
Bengal and Punjab Acts) Order, 1948.
The Adaptation of Laws Order, 1950.

[4th June, 1942.]

*An Act to prevent theft of unidentifiable articles in
industrial areas.*

WHEREAS it is expedient to prevent theft of
unidentifiable articles in industrial areas ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Criminal Law
(Industrial Areas) Amendment Act, 1942. Short
title and
extent.

(2) This section and section 2 extend to the whole of ²[West
Bengal] and the remaining provisions of this Act shall extend
to any area declared to be an industrial area under section 2.

2. The ³[State] Government may, by notification⁴ in the
Official Gazette, declare any area to be an industrial area for
the purposes of this Act. Declara-
tion of
industrial
area.

3. Any person found, between sunset and sunrise,—

(a) armed with any dangerous or offensive instrument
whatsoever, with intent to commit any criminal act ;

(b) disguised in any manner with intent to commit any
criminal act ;

Apprehen-
sion and
punish-
ment of
persons
armed or
previously
convicted
of theft
or of other
persons.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 19th July, 1941, pt. IVB, page 79; the Report of the Select Committee was presented to the Council on the 11th December, 1941; for proceedings of the Council, see the proceedings of the meetings of the Bengal Legislative Council held on the 28th July, 5th and 18th August, 2nd September and 11th December, 1941, and also 19th and 26th February, 1942; for proceedings of the Assembly, see the proceedings of the meetings of the Bengal Legislative Assembly held on the 10th March and the 2nd April, 1942.

²The words within square brackets were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³The word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴For notification declaring area to be an industrial area for the purposes of this Act, see notification No. 2260PL, dated the 26th June, 1942, published in the *Calcutta Gazette, Extraordinary*, of the 27th June, 1942, page 127.

[Ben. Act IV of 1942.]

(Section 4.)

(c) in any dwelling-house or other building whatsoever, without being able satisfactorily to account for his presence therein ; or

any person previously convicted of theft found between sunset and sunrise on board any vessel or boat, or lying or loitering in any bazar, street, yard, thoroughfare or other place who shall not give any satisfactory account of himself ; or

any person having in his possession, without lawful excuse (the proof of which excuse shall be on such person) any implement of house-breaking ;

may be taken into custody by any police-officer without a warrant, and shall be liable, on summary conviction before a Magistrate, to imprisonment, for a term which may extend to three months.

Explanation.—In this section the word “street” means any road, lane, footway, square, court, alley or passage, whether a thoroughfare or not, to which the public have, permanently or temporarily, a right of access.

Possession
or dealing
with
thing
stolen
or fraud-
ulently
obtained.

4. (1) Whoever has in his possession or conveys in any manner, or offers for sale or pawn, anything which there is reason to believe to have been stolen or fraudulently obtained, shall, if he fails to account for such possession or such act to the satisfaction of the Magistrate, be liable to fine which may extend to one hundred rupees, or to imprisonment, for a term which may extend to six months.

(2) If any person charged under sub-section (1) in respect of anything declares that he received such thing from some other person, or that he was employed as a carrier, agent or servant to convey such thing for some other person, the Magistrate, after such further inquiry (if any) as he may deem necessary, may summon such other person, and any former or pretended purchaser or other person through whose possession such thing is alleged to have passed, to appear before him, and may examine such person and any witnesses who are produced to testify to such receipt, employment or possession ; and, if it appears to such Magistrate that any such person had possession of such thing and had reasonable cause to believe that it was stolen or fraudulently obtained, the Magistrate may punish him with fine which may extend to one hundred rupees, or with imprisonment, for a term which may extend to six months.

Bengal Act V of 1942¹

THE BENGAL TOUTS ACT, 1942.

REPEALED IN PART

.. West Ben. Act XIX of 1949.

ADAPTED

{ The Indian Independence (Adaptation of
Bengal and Punjab Acts) Order, 1948.
The Adaptation of Laws Order, 1950.

[11th June, 1942.]

*An Act for the suppression of touts in Courts and certain offices
in Bengal.*

WHEREAS it is expedient to make better provision for regulating the employment of clerks of Legal Practitioners and for the suppression of touts in Courts and certain offices in Bengal and to that end to amend the Legal Practitioners Act, 1879, the Indian Registration Act, 1908, and the Workmen's Compensation Act, 1923, in their application to Bengal, and also to amend the Bengal Village Self-Government Act, 1919, the Bengal Wakf Act, 1934, and the Bengal Agricultural Debtors Act, 1935,² in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Touts Act, 1942.

Short
title and
commence-
ment.

(2) It shall come into force, in whole or in part, on such date as the ³[State] Government may, by notification⁴ in the *Official Gazette*, appoint, and for this purpose different dates may be appointed for different provisions of this Act.

2. The Legal Practitioners Act, 1879, the Indian Registration Act, 1908, and the Workmen's Compensation Act, 1923, shall, in their application to ⁵[West Bengal], be amended in the manner provided in this Act.

Amend-
ment of
the Legal
Practi-
tioners
Act, 1879,
the Indian
Registra-
tion Act,
1908, and
the Work-
men's Compen-
sation
Act, 1923,
in their
applica-
tion to
West
Bengal.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 2nd December, 1937, pt. IVA, page 114 ; the Report of the Select Committee was presented to the Assembly on the 28th November, 1940 for proceedings of the Assembly, see the proceedings of the meetings of the Bengal Legislative Assembly held on the 16th February, 1938, 29th August and 28th November, 1940, and the 7th April, 1941 ; for proceedings of the Council, see the proceedings of the meetings of the Bengal Legislative Council held on the 28th July and 4th, 5th and 12th August, 1941.

²The year of this Act was changed from "1935" to "1936" by sec. 2 and the First schedule to the West Bengal Repealing and Amending Act, 1948 (West Ben. Act VII of 1948).

³The word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴The Act came into force on the 1st day of November, 1943, vide notification No. 3436J., dated the 18th September, 1943, published in the *Calcutta Gazette*, dated the 23rd September, 1943, Part I, page 1454.

⁵The words within square brackets were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

XVIII of
1879.
XVI of
1908.
VIII of
1923.
Ben. Act
V of 1919.
Ben. Act
XIII of
1934.
Ben. Act
VII of
1936.

(Sections 3—6.)

Amend-
ment of
section 3
of Act
XVIII of
1879.

3. After clause (b) in the definition of "tout" in section 3 of the Legal Practitioners Act, 1879, the following word and clause shall be added, namely :—

XVIII of
1879.

"or

(c) who is declared to be deemed to be a tout for the purposes of this Act by rules made by the High Court or the Chief Controlling Revenue-Authority, as the case may be, under section 31A."

Amend-
ment of
section 13
of Act
XVIII of
1879.

4. After clause (e) of section 13 of the Legal Practitioners Act, 1879, the following clause shall be inserted, namely :—

"(ee) who knowing that a person has not a licence under section 31A employs such person as a clerk, or".

Amend-
ment of
section 22
of Act
XVIII of
1879.

5. After clause (d) of section 22 of the Legal Practitioners Act, 1879, the following clause shall be inserted, namely :—

"(dd) who knowing that a person has not a licence under section 31A employs such person as a clerk, or".

Insertion
of new
Chapter
VIA in
Act
XVIII of
1879.

6. After Chapter VI of the Legal Practitioners Act, 1879, the following chapter shall be inserted, namely :—

"CHAPTER VIA.

Of clerks of Advocates, Vakils, Attorneys, Pleaders, Muktears and Revenue-agents.

31A. (1) The High Court may, from time to time, make rules¹ consistent with this Act as to the following matters, namely :—
Power to make rules as to employment, etc., of clerks of Advocates, Vakils, etc., and of Revenue-agents.

- (a) the employment of clerks by Advocates, Vakils, Attorneys, Pleaders and Muktears ;
- (b) the manner in which and the terms subject to which such clerks may be granted licences ;
- (c) the fees (if any) to be paid for such licences ;
- (d) the conditions under which persons acting as clerks of Advocates, Vakils, Attorneys, Pleaders and Muktears without licences shall be deemed to be touts for the purposes of this Act.

¹For rules under this sub-section, see notification No. 3437J., dated the 18th September, 1943, published in the *Calcutta Gazette*, dated the 23rd September, 1943, Part I, page 1454.

V of 1942.]

(Sections 7, 8.)

(2) The Chief Controlling Revenue-Authority may, from time to time, make rules¹ consistent with this Act relating to the matters specified in sub-section (1) in regard to clerks of Revenue-agents.

(3) All rules made under this section shall be submitted to the ²[State] Government for approval, and, after they have been approved, they shall be published in the *Official Gazette* and on publication shall have effect as if enacted in this Act."

XVIII of
1879.

7. After sub-section (6) of section 36 of the Legal Practitioners Act, 1879, the following sub-sections shall be added, namely :-

Amend-
ment of
section 36
of Act
XVIII of
1879.

(7) Every person who having been excluded from the precincts of a Court under sub-section (4) enters or is found within the precincts of any Court without a written permission from the presiding officer of the Court shall be deemed to be acting as a tout within the meaning of sub-section (6) :

Provided that this sub-section shall not apply where such person is a party to any case in the Court or has been directed to appear by any process of the Court.

(8) Any presiding officer of a Court may, by an order in writing, direct any person named in the order to arrest any such tout found within the precincts of the Court. Such tout may be arrested accordingly and shall be forthwith produced before the officer.

Act V of
1898.

If the tout admits his offence the provisions of sections 480 and 481 of the Code of Criminal Procedure, 1898, shall be applicable, so far as may be, to his detention, trial and punishment.

If the tout does not admit his offence the provisions of section 482 of the said Code shall be similarly applicable to his detention, trial and punishment."

XVI of
1908.

8. In section 2 of the Indian Registration Act, 1908,—

Amend-
ment of
section 2
of Act
XVI of
1908.

(1) the word " and " at the end of clause (9) shall be omitted and

(2) after clause (10) the following word and clause shall be added, namely :—

" and

(11) 'tout' means a person—

(a) who habitually frequents the precincts of a registration office, without a licence granted to him under the rules made under section 80G, for the purpose of obtaining employment for himself or for any other person in connection with any registration business ;
or

¹For rules, see notification No. 3438J., dated the 18th September, 1943, published in the *Calcutta Gazette*, dated the 23rd September 1943, Part I.

²See footnote 3 on page 293, ante.

(Section 9.)

(b) who is declared to be deemed to be a tout for the purposes of this Act by rules made under section 80G ;”.

Insertion
of new
Parts
XIIIA and
XIIIB in
Act XVI of
1908.

9. After Part XIII of the Indian Registration Act, 1908, XVI of 1908.
the following Parts shall be inserted, namely :—

“PART XIII A.

Of Touts.

80A. (1) Every Registrar of a district as regards his own office and the offices subordinate thereto and every subdivisional magistrate as regards the registration offices within his own jurisdiction may frame and publish lists of persons proved to his satisfaction or to the satisfaction of any Sub-Registrar as provided in section 80B, by evidence of general repute or otherwise, habitually to act as touts, and may, from time to time, alter and amend such lists.

(2) No person's name shall be included in any such list until he shall have had an opportunity of showing cause against such inclusion.

(3) Where the name of any person is included in a list framed and published by a subdivisional magistrate under this section, such person may, within thirty days of the publication of the list in which his name first appears, apply in writing to the Registrar of the district for the removal of his name from such list, and the orders of the Registrar, passed after such inquiry (if any) as he considers necessary, on such application shall be final.

80B. Any Registrar of a district or subdivisional magistrate may send to any Sub-Registrar within the jurisdiction of such authority the name of any person alleged or suspected to be a tout, and request the Sub-Registrar to hold an inquiry in regard to such person ; and the Sub-Registrar shall thereupon hold an inquiry into the conduct of that person and, after giving him an opportunity of showing cause as provided in sub-section (2) of section 80A, shall report to the authority who has made the request whether the person has been proved to the satisfaction of the Sub-Registrar to be a tout ; and that authority may include the name of any person who has been so proved to be a tout in the list of touts framed and published by him under sub-section (1) of section 80A :

Provided that such authority shall hear any such person who, before his name has been so included, appears before him and desires to be heard.

80C. A copy of every such list shall be kept hung up in every registration office to which the same relates.
Hanging up of lists of touts in registration offices.

V of 1942.]

(Section 9.)

80D. A registering officer may, by general or special order, exclude from the precincts of his registration office any person whose name is included in any such list.

80E. Every person who having been excluded from the precincts of a registration office under section 80D is found within the precincts of any registration office without written permission from the registering officer shall be deemed to be acting as a tout for the purposes of section 82A :

Provided that this section shall not apply where such person is a party to a document intended for registration at such office or has been directed to appear by any process of the registering officer.

80F. (1) Any registering officer may, by an order in writing, direct any person named in the order to arrest any such tout found within the precincts of the registration office. Such tout may be arrested accordingly and shall be forthwith produced before the registering officer.

(2) If the tout admits his offence the provisions of sections 480 and 481 of the Code of Criminal Procedure, 1898, shall be applicable, so far as may be, to his detention, trial and punishment.

Act V of 1898.

If the tout does not admit his offence the provisions of section 482 of the said Code shall be similarly applicable to his detention, trial and punishment.

(3) A registering officer shall be deemed to be a Civil Court for the purposes of sections 480, 481 and 482 of the said Code.

PART XIIIIB.

Of Deed-writers.

80G. (1) The Inspector-General shall have power, from time to time, to make rules consistent with this Act—
Power to Inspector-General to make rule relating to deed-writers.

- (a) prescribing the manner in which and the terms subject to which persons who write documents, outside the precincts of registration office, or who frequent the precincts of registration offices, for the purpose of writing documents, may be granted licences ;
- (b) prescribing the fees (if any) to be paid for such licences ; and

The Bengal Touts Act, 1942.

[Ben. Act V of 1942.]

(Sections 10—19.)

(c) declaring the conditions under which persons who write documents outside the precincts of registration offices without licences shall be deemed to be touts for the purposes of this Act.

(2) The rules so made shall be submitted to the ¹[State] Government for approval, and, after they have been approved they shall be published in the *Official Gazette* and on publication shall have effect as if enacted in this Act."

Insertion
of new
section 82A
in Act
XVI of
1908.

10. After section 82 of the Indian Registration Act, 1908, XVI of 1908, the following section shall be inserted, namely:—

"82A. Whoever acts as a tout whilst his name is included in a list of touts framed and published under this Act shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both."

Amend-
ment of
section 83
of Act
XVI of
1908.

11. In sub-section (2) of section 83 of the Indian Registration Act, 1908, for the word "Offences" the words, figure and letter "Save as provided in section 80F, offences" shall be substituted.

Insertion
of new
section
31A
in Act
VIII
of 1923.

12. After section 31 of the Workmen's Compensation Act, VIII of 1923, 1923, the following section shall be inserted, namely:—

"31A. (1) The provisions of section 36 of the Legal Practitioners Act, 1879, shall, subject to the provisions of this section, be applicable, so far as may be, to the framing and publication of a list of touts, to the exclusion of touts included in the list from the precincts of the court of the Commissioner and to the arrest, detention, trial and punishment of such touts.

(2) A Commissioner shall, for the purposes of the said section 36, be deemed to be an authority referred to in sub-section (1) of that section.

(3) For the purposes of this section 'tout' means—

(a) a 'tout' as defined in clause (a) of section 3 of the Legal Practitioners Act, 1879; or

(b) a person who habitually frequents the precincts of the court of a Commissioner—

(i) for the purpose of procuring work as an agent under section 24, or

(ii) otherwise than as a party to or a witness in any proceedings before the Commissioner or as a *bona fide* agent appointed under section 24."

13 to 19. [Repealed by section 3 and the second Schedule to the West Bengal Repealing and Amending Act, 1949 (West Ben. Act XIX of 1949).]

¹See footnote 3 on page 293, ante.

Bengal Act VI of 1942¹

**THE WORKMEN'S COMPENSATION (BENGAL AMENDMENT)
ACT, 1942.**

ADAPTED { The Indian Independence
(Adaptation of Bengal and
Punjab Acts) Order, 1948.
The Adaptation of Laws
Order, 1950.

[19th November, 1942.]

An Act further to amend the Workmen's Compensation Act, 1923.

VIII of
1928.

WHEREAS it is expedient further to amend the Workmen's Compensation Act, 1923, in its application to Bengal, for the purposes and in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Workmen's Compensation (Bengal Amendment) Act, 1942.

Short
title and
extent.

(2) It extends to the whole of ²[West Bengal].

2. The Workmen's Compensation Act, 1923, hereinafter referred, to as the said Act, shall, in its application to [West Bengal] be amended for the purposes and in the manner hereinafter provided.

**Appli-
cation of
Act.**

3. After clause (f) of sub-section (1) of section 2 of the said Act the following clause shall be inserted, namely :—

Amend-
ment of
section 2
of Act
VIII of
1923.

“(ff) ‘medical referee’ means a qualified medical practitioner appointed under section 24A as a medical referee for the purposes of this Act”;

4. After section 24 of the said Act the following sections shall be inserted, namely :—

Insertion
of new
sections
24A and
24B.

" 24A. (1) If any question arises in any proceedings under this Act pending before the Commissioner as to—
Reference of disputed medical questions to a medical referee.

(a) the nature and extent of the permanent disablement of a workman, or

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 6th March, 1941, part IVB, page 3; the Report of the Select Committee was presented to the Council on the 22nd August, 1941; for the proceedings of the Council, see the proceedings of the meeting of the Bengal Legislative Council held on the 28th July, 12th, 22nd and 28th August, 1941; for proceedings of the Assembly, see the proceedings of the meetings of the Bengal Legislative Assembly held on the 28th September, 1942.

²The words within square brackets were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

(Section 4.)

- (b) the duration of his temporary disablement, or
- (c) whether the incapacity of a workman is due to personal injury by accident, or
- (d) whether a workman has contracted any occupational disease specified in Schedule III,

the question shall, in default of agreement, on the joint application of both parties or on the application of either party in the prescribed manner, and on payment in the prescribed manner by the parties, or the party making the application, as the case may be, of the prescribed fees and expenses, be referred by the Commissioner to a medical referee appointed by him in his discretion from amongst the medical practitioners included in the list prepared under section 24B :

Provided that where an application is made by only one of the parties, if the Commissioner is of the opinion that the question is one which ought not on account of the exceptional difficulty of the case or for any other sufficient reason be referred to a medical referee, he may after recording his reasons in writing reject the application :

Provided further that if the parties themselves jointly select any medical practitioner included in the said list for appointment as the medical referee, the Commissioner shall, on payment of the prescribed fees and expenses in the prescribed manner, appoint that medical practitioner :

Provided further that a medical practitioner whose services have been used for the medical treatment of an injury by accident to a workman, or of an occupational disease specified in Schedule III contracted by such workman, by or on behalf of such workman or his employer or by or on behalf of any insurers interested in any proceeding under this Act arising out of such injury or disease, shall not act as a medical referee in any proceedings under this Act in respect of such injury or disease.

(2) The medical referee to whom such a reference is made under sub-section (1) shall, in accordance with the prescribed rules, require the workman to submit to a medical examination by him or under his personal direction and shall personally or with such medical assistance as he may deem necessary examine the workman medically and send to the Commissioner who has made the reference a report in respect of the question specifically mentioned in the order of reference.

(3) If a workman refuses to submit himself for medical examination by or under the personal direction of the medical referee to whom a reference has been made under this section, or if a workman in any way obstructs the medical examination by or under the personal direction of the medical referee the workman's right to compensation under this Act and his right to continue any proceedings under this Act shall be suspended until such examination has taken place.

VI of 1942.]

(Section 5.)

(4) In any proceedings under this Act in which evidence is recorded, the report of the medical referee shall as between the parties to the proceedings be conclusive proof of the facts related therein within the meaning of section 4 of the Indian Evidence Act, 1872 :

I of 1872.

Provided that such report shall not so be regarded as conclusive proof of the facts related therein if in the particular proceedings the Commissioner, either of his own motion or on application being made to him by either party, for reasons to be recorded by him in writing, deems it expedient in the interests of justice to allow the parties to adduce further evidence on such facts.

24B. The ¹[State] Government shall prepare a list of qualified medical practitioners who may be appointed as medical referees under section 24A and shall publish the said list in the *Official Gazette*."

List of qualified medical practitioners for appointment as medical referees.

5. After clause (f) of sub-section (2) of section 32 of the said Act the following clauses shall be inserted, namely :—

Amendment of section 32.

" (ff) for prescribing the procedure relating to the reference of medical questions to medical referees under sub-section (1) of section 24A ;

(ff1) for regulating the procedure relating to the medical examination of a workman by or under the personal direction of a medical referee and the submission of the report of such medical referee, under-sub-section (2) of section 24A ;

(ff2) for prescribing and determining the fees and expenses payable in connection with references of medical questions to medical referees under sub-section (1) of section 24A ;".

¹The word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

Bengal Act VII of 1943

THE BENGAL VAGRANCY ACT, 1949.

CONTENTS

Chapter I.

PRELIMINARY.

Section.

1. Short title, extent and commencement.
2. Definitions.
3. Vagrancy Advisory Board.
4. Appointment of Controller of Vagrancy and his assistants.
5. Special Magistrates.

Chapter II.

PROCEDURE.

6. Power to require apparent vagrant to appear before Special Magistrate.
7. Summary inquiry in respect of apparent vagrant and declaration of person to be vagrant by Special Magistrate.
8. Detention in receiving centre and medical examination of vagrant.
9. Procedure for sending vagrant to vagrants' home.
10. Externment of vagrant from area in which Act is in force.
11. Validity of custody and detention of vagrant.

Chapter III.

RECEIVING CENTRES AND VAGRANTS' HOME.

12. Provision of receiving centres.
13. Provision of vagrants' homes.
14. Search of vagrants.
15. Management and discipline.
16. Transfer of vagrants from one vagrants' home to another.
17. Outside employment to be obtained for vagrants when possible.
18. Discharge of vagrants from vagrants' home.

Chapter IV.

PENALTIES AND MISCELLANEOUS.

19. Punishment for employing or causing person to ask for alms.
20. Punishment for refusing to go before a Special Magistrate.
21. Punishment for refusing to submit to medical examination at receiving centre.
22. Punishment for escape from receiving centre or vagrants' home.
23. Procedure at end of imprisonment.
24. Prosecution and jurisdiction to try offenders.
25. Persons to be deemed public servants.
26. Indemnity.
27. Repeal.
28. Power to make rules.
29. Continuance of action taken under Bengal Ordinance II of 1943.

Bengal Act VII of 1943¹

THE BENGAL VAGRANCY ACT, 1943.

REPEALED IN PART .. West Ben. Act VII of 1948.

Pages 303-314—

(Adaptation of Acts)

*Strike out Bengal Act VII of 1943 and insert the following note, namely:—

Order,

(Repealed by West Ben. Act XXX of 1959, section 51.)

, 1943.]

[No. 5, dated the 1st May, 1961.]

WHEREAS it is expedient to make provision for dealing with vagrancy in Bengal;

It is hereby enacted as follows:—

CHAPTER I.

Preliminary.

1. (1) This Act may be called the Bengal Vagrancy Act, 1943.

Short title, extent and commencement.

(2) It extends to the whole of ²[West Bengal.]

(3) It shall come into force in Calcutta at once and in such other areas on such other dates as the ³[State] Government may, by notification⁴ in the *Official Gazette*, direct.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(1) “Board” means the Vagrancy Advisory Board established under sub-section (1) of section 3;

¹For Statement of Objects and Reasons see the *Calcutta Gazette*, dated the 18th February, 1943, part IVA, page 10; for the proceedings of the Assembly, see the proceedings of the meetings of the Bengal Legislative Assembly held on the 2nd March and 15th September, 1943; for the proceedings of the Bengal Legislative Council, see the proceedings of the meetings of the Bengal Legislative Council held on the 20th, 22nd, 27th and the 28th September, 1943.

²These words within the square brackets were substituted for the word “Bengal” by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³The word within square brackets was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴The Act came into force on the 25th October, 1943, in the Howrah and Bally police-stations in the district of Howrah, and in the Tollygunge, Behala, Matiabruz, Baranagar and Dum Dum police-stations in the district of 24-Parganas, vide notification No. 5666 A.R.P., dated the 23rd October, 1943, published in the *Calcutta Gazette*, *Extraordinary*, dated the 25th October, 1943, on page 182; and on the 7th December, 1944, in the Golabari police-station in the district of Howrah, vide notification No. 3304 A.R.P., dated the 24th/29th November, 1944, published in the *Calcutta Gazette*, dated the 7th December, 1944, Part I, page 1409.

(Chapter I.—Preliminary.—Section 3.)

- (2) "Calcutta" means the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866, together with the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866; Ben. Act IV of 1866.
Ben. Act II of 1866.
- (3) "child" means a person under the age of fourteen years;
- (4) "Controller" means the Controller of Vagrancy appointed under sub-section (1) of section 4;
- (5) ^{1*} * * * *
- (6) "prescribed" means prescribed by rules made under this Act;
- (7) "receiving centre" means a house or institution for the reception and temporary detention of vagrants, provided by the ²[State] Government or certified as such under sub-section (1) of section 12;
- (8) "Special Magistrate" means a Magistrate empowered to act as such under section 5;
- (9) "vagrant" means a person ^{3*} * * * * found asking for alms in any public place, or wandering about or remaining in any public place in such condition or manner as makes it likely that such person exists by asking for alms but does not include a person collecting money or asking for food or gifts for a prescribed purpose;
- (10) "vagrants' home" means an institution provided by the ²[State] Government under sub-section (1) of section 13 for the permanent detention of vagrants.

Vagrancy
Advisory
Board.

3. (1) The ²[State] Government as soon as possible after the commencement of this Act shall establish a Board to be called the Vagrancy Advisory Board.

(2) The Board shall be constituted in the manner prescribed, subject to the condition that the number of the members of the Board shall not be less than ten.

(3) The function of the Board shall be to advise the ²[State] Government on all matters relating to the control of vagrancy and in particular on the administration of this Act and for the aforementioned purposes any member of the Board may enter and inspect at any time any receiving centre or vagrants' home.

¹Clause (5) was omitted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

²See foot-note 3 on page 305, *ante*.

³The words "not being of European extraction" were omitted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

of 1943.]

(Chapter I.—Preliminary.—Sections 4, 5—Chapter II.—
Procedure.—Sections 6, 7.)

(4) The Board may, with the previous approval of the ¹[State] Government, make regulations to provide for,—

- (a) the times and places at which its meetings shall be held ;
- (b) the issue of notices concerning such meetings; and
- (c) the conduct of business thereat.

4. (1) For carrying out the purposes of this Act the ¹[State] Government may appoint a person to be Controller of Vagrancy together with such other persons to assist him as it thinks fit.

Appointment of Controller of Vagrancy and his assistants.

(2) Persons appointed under sub-section (1) shall exercise such powers as may be conferred and perform such functions as may be required by or under this Act.

5. For the purposes of Chapter II of this Act the ¹[State] Government may empower any Presidency Magistrate in Calcutta and any Magistrate of the first class elsewhere to act as a Special Magistrate.

Special Magistrates.

CHAPTER II.

Procedure.

6. Any police officer authorised in this behalf by the Commissioner of Police in Calcutta and by the District Magistrate elsewhere may require any person who is apparently a vagrant to accompany him or any other police officer to, and to appear before, a Special Magistrate.

Power to require apparent vagrant to appear before Special Magistrate.

7. (1) When a person is brought before a Special Magistrate under section 6, such Special Magistrate shall make a summary inquiry in the prescribed manner into the circumstances and character of such person, and if, after hearing anything which such person may wish to say he is satisfied that such person is a vagrant, he shall record a declaration to this effect, and the provisions of this Act relating to vagrants shall thereupon apply to such person.

Summary inquiry in respect of apparent vagrant and declaration of person to be a vagrant by Special Magistrate.

(2) If on making the summary inquiry referred to in sub-section (1) the Special Magistrate is not satisfied that the person brought before him under section 6 is a vagrant such person shall forthwith be released.

(3) A Special Magistrate recording a declaration under sub-section (1) that a person is a vagrant shall forthwith send a certified copy of such declaration to the Controller, and to the officer-in-charge of the receiving centre to which such vagrant is sent under sub-section (1) of section 8.

¹See foot-note 3 on page 305, ante.

(Chapter II.—Procedure.—Sections 8, 9.)

Detention
in re-
ceiving
centre and
medical
examina-
tion of
vagrant.

8. (1) When a person has been declared to be a vagrant under sub-section (1) of section 7 he shall forthwith be sent in the manner prescribed to the nearest receiving centre and there handed over to the custody of the officer-in-charge of such receiving centre, and such vagrant shall be detained in such receiving centre until he is sent therefrom to a vagrants' home under sub-section (1) of section 9.

(2) As soon as possible after the commencement of the detention of a vagrant in a receiving centre the medical officer of such receiving centre shall with such medical help as may be necessary medically examine the vagrant in the manner prescribed as quickly as is consistent with the circumstances of the case and shall thereupon furnish the officer-in-charge of the receiving centre with a medical report regarding the health and bodily condition of the vagrant.

(3) The medical report referred to in sub-section (2) shall state *inter alia*,—

- (a) the sex and age of the vagrant;
- (b) whether the vagrant is a leper;
- (c) from what, if any, communicable diseases other than leprosy the vagrant is suffering;
- (d) whether the vagrant is insane or mentally deficient;
- (e) what is the general state of health and bodily condition of the vagrant and for which, if any, of the prescribed types of work he is fit.

Procedure
for sending
vagrant
to vag-
rants'
home.

9. (1) On receipt of the medical report referred to in sub-section (2) of section 8 the officer-in-charge of a receiving centre shall, as soon as the necessary arrangements can be made, send the vagrant in the prescribed manner to such vagrants' home as the Controller may by general or special order in this behalf direct, and the said officer-in-charge shall along with such vagrant send to the Manager of the said vagrants' home,—

- (a) the certified copy of the declaration made under sub-section (1) of section 7 relating to such vagrant which is to be sent to such officer-in-charge under sub-section (3) of the said section, and
- (b) the said medical report.

(2) When a vagrant is sent to a vagrants' home under the provisions of sub-section (1) he shall be handed over to the custody of the Manager of such vagrants' home and shall be detained therein, or in a vagrants' home to which he may be transferred under section 16, until duly discharged therefrom under section 18.

VII of 1943.]

(Chapter II.—Procedure.—Section 10.)

(3) In issuing any order under sub-section (1) the Controller shall ensure that the following classes of vagrants, namely:—

- (a) lepers,
- (b) the insane or mentally deficient,
- (c) those suffering from communicable diseases other than leprosy,
- (d) children,

are segregated from each other and from vagrants who do not belong to any of the aforementioned classes and shall also ensure that the male vagrants are segregated from the female vagrants :

Provided that the provisions of this sub-section in respect of children may be relaxed as prescribed.

10. (1) If after an inquiry made under sub-section (1) of section 7 the Special Magistrate is satisfied that the person brought before him under section 6 is a vagrant but, in the course of such inquiry, it has appeared that the vagrant was not born in the area in which this Act is in force or has not been continuously resident therein for more than one year, the Special Magistrate, after making such further inquiry, if any, as he may deem necessary, may by order in writing direct the said vagrant to leave the said area within such time and by such route or routes as may be stated in the order and not to return thereto without the permission in writing of the Controller, and in such case, notwithstanding anything contained in sub-section (1) of section 7, the provisions of sections 8 and 9 shall not apply to such vagrant:

Extern-
ment of
vagrant
from area
in which
the Act is
in force.

Provided that if the Special Magistrate deems it necessary to make any further inquiry as aforesaid in respect of such vagrant, the vagrant shall be detained pending conclusion of the said inquiry in such receiving centre as the Controller may by general or special order in this behalf direct and for this purpose shall be sent thereto in the manner prescribed and there handed over to the custody of the officer-in-charge of such receiving centre, and shall, while he is so detained, be subject to the rules of management and discipline referred to in sub-section (1) of section 15.

(2) The Controller shall not give the permission referred to in sub-section (1) unless, if the vagrant had been detained in a vagrants' home, such vagrant would have been eligible to have been discharged therefrom under the provisions of sub-section (1) of section 18.

(3) When a vagrant against whom an order has been made under sub-section (1) fails to comply with such order within the time specified therein, or after complying with the said order returns without the permission in writing of the controller to any place within the area referred to in the said order, such vagrant may be arrested without a warrant by any police officer, and shall be liable, on conviction before a Magistrate, to be punished with rigorous imprisonment for a term which may extend to six months.

(Chapter II.—Procedure.—Section 11—Chapter III.—Receiving Centres and Vagrants' Home.—Sections 12—13.)

Validity
of custody
and deten-
tion of
vagrant.

11. A declaration that a person is a vagrant recorded by a Special Magistrate under sub-section (1) of section 7 shall be sufficient authority to any person to retain such vagrant in his custody when such person is under the provisions of this Act or of any rule made thereunder conveying a vagrant from the Court of a Special Magistrate to a receiving centre or, from a receiving centre to a vagrants' home or from one vagrants' home to another and to the officer-in-charge of a receiving centre and to the Manager of a vagrants' home for detaining such vagrant in accordance with the provisions of this Act in a receiving centre or vagrants' home, as the case may be.

CHAPTER III.

Receiving Centres and Vagrants' Home.

Provision
of re-
ceiving
centres.

12. (1) The ¹[State] Government may provide and maintain together with the necessary furniture and establishment one or more receiving centres at such place or places as it thinks fit, or may certify by notification in the *Official Gazette* any existing charitable or other institution, subject to the prior consent of the controlling authority of such institution and on such conditions as may be mutually agreed upon between the ¹[State] Government and the said authority, to be a receiving centre for the purposes of this Act.

(2) For the purposes of this Act every receiving centre shall be under the immediate control of an officer-in-charge who shall be appointed by the ¹[State] Government and who shall perform his functions subject to the orders of the Controller.

(3) The ¹[State] Government shall also appoint for every receiving centre one or more suitably qualified persons as medical officers.

Provision
of vag-
ants

13. (1) The ¹[State] Government may provide and maintain together with the necessary furniture, equipment and establishment, one or more vagrants' homes at such place or places as it thinks fit and such vagrants' homes may include provision for the teaching of agricultural, industrial or other pursuits and for the general education and medical care of the inmates.

(2) Every such vagrants' home shall be under the immediate charge of a Manager who shall be appointed by the ¹[State] Government and who shall perform his functions subject to the orders of the Controller.

(3) The ¹[State] Government may appoint in respect of a vagrants' home a suitably qualified person as medical officer and one or more suitably qualified persons as teachers.

¹See foot-note 3 on page 305, ante.

VII of 1943.]

(Chapter III.—Receiving Centres and Vagrants' Home.—Sections 14—18.)

14. Every officer-in-charge of a receiving centre or Manager of a vagrants' home may order that any vagrant detained in such receiving centre or vagrants' home shall be searched and that the personal effects of such vagrant shall be inspected and any money then found with or on the vagrant shall be applied in the manner prescribed towards the welfare of vagrants and any of such effects other than money may be sold in auction and the proceeds of the sale shall be applied as aforesaid:

Search of
vagrants.

Provided that a female vagrant shall be searched by a female only and with due regard to decency.

15. (1) Vagrants detained in receiving centres or vagrants' homes under this Act shall be subject to such rules of management and discipline as may from time to time be prescribed.

Manage-
ment and
discipline.

Explanation.—Discipline includes the enforcement of the doing of manual or other work by a vagrant.

(2) If any vagrant wilfully disobeys or neglects to comply with any rule referred to in sub-section (1) he shall on conviction before a Magistrate be liable to be punished with rigorous imprisonment for a term which may extend to three months.

(3) The ¹[State] Government may authorise the Manager of a vagrants' home to punish any vagrant detained in such vagrants' home who wilfully disobeys or neglects to comply with any rule referred to in sub-section (1) with hard labour of the type prescribed for any period not exceeding seven days; and such punishment may be in lieu of or in addition to any punishment to which the vagrant may be liable under sub-section (2).

16. The Controller may by order in writing direct the transfer of a vagrant from one vagrants' home to another and a vagrant in respect of whom such an order is passed shall thereupon be sent in the manner prescribed to, and handed over to the custody of, the Manager of the vagrants' home to which he has by such order been transferred.

Transfer
of vag-
rants
from
one vag-
rants'
home to
another.

17. The Manager of a Vagrants' home shall use his best endeavours to obtain outside the vagrants' home suitable employment for vagrants detained therein.

Outside
employ-
ment to
be ob-
tained for
vagrants
when
possible.

18. (1) A vagrant may be discharged from a vagrants' home under orders of the Controller,—

Discharge
of vagrants
from vag-
rants'
home.

(a) on the Manager of such vagrants' home certifying in the prescribed manner that satisfactory employment has been obtained for such vagrant;

(b) on its being shown to the satisfaction of the Controller that such vagrant has become possessed of an income sufficient to enable him to support himself without resorting to vagrancy;

¹See foot-note 3 on page 305, ante.

(Chapter IV.—Penalties and Miscellaneous.—Sections 19—22.)

(c) on a relative of such vagrant, or a person who the Controller is satisfied is interested in the welfare of such vagrant, entering into a bond with or without sureties for a sum prescribed, to look after and maintain such vagrant and to prevent him from resorting to vagrancy;

(d) for other good and sufficient reasons to be recorded by the Controller in writing.

(2) When the employment referred to in clause (a) of sub-section (1) has been obtained for a vagrant, any such vagrant refusing or neglecting to avail himself thereof shall be liable to be punished on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to one month.

CHAPTER IV.**Penalties and Miscellaneous.**

Punish-
ment for
employing
or causing
persons
to ask
for alms.

19. Whoever employs or causes any person to ask for alms, or abets the employment or the causing of a person to ask for alms, or whoever, having the custody, charge, or care of a child, connives at or encourages the employment or the causing of a child to ask for alms shall be liable to be punished on conviction before a Magistrate with rigorous imprisonment for a term which may extend to two years or with fine or with both.

Punish-
ment for
refusing
to go
before a
Special
Magis-
trate.

20. Any person refusing or failing to accompany a police officer to, or to appear before a Special Magistrate, when required by such officer under section 6 to do so, may be arrested without warrant, and shall be liable to be punished on conviction before a Magistrate with rigorous imprisonment for a term which may extend to one month or with fine, or with both.

Punish-
ment for
refusing
to submit
to medical
examina-
tion at
receiving
centre.

21. Any vagrant who refuses to submit to a medical examination by the medical officer of a receiving centre or by any person assisting such medical officer under the provisions of sub-section (2) of section 8 shall be liable to be punished on conviction before a Magistrate with rigorous imprisonment for a term which may extend to one month.

Punish-
ment for
escape
from re-
ceiving
centre or
vagrants'
home.

22. Any vagrant who escapes from any custody to which he has been committed under this Act or any rule made thereunder or who leaves a receiving centre without the permission of the officer-in-charge thereof, or who leaves a vagrants' home without the permission of the Manager thereof, or who, having with the permission of such officer-in-charge or Manager, as the case may be, left a receiving centre or a vagrants' home for a time specified under any rule referred to in sub-section (1) of section 15, wilfully fails to return on the expiration of such time, may be arrested without warrant and shall for every such offence, be liable to be punished, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to six months.

VII of 1943.]

(Chapter IV.—Penalties and Miscellaneous.—Sections 23—28.)

23. Every person imprisoned under the provisions of sub-section (2) of section 15, sub-section (2) of section 18, section 20, section 21 or section 22 shall at the end of his term of imprisonment be brought under police custody before the nearest Special Magistrate who shall forthwith deal with such person in the manner laid down in sections 7, 8 and 9 as if such person had been brought before such Special Magistrate under the provisions of section 6:

Procedure at end of imprisonment.

Provided that if the said Special Magistrate is of the opinion that such person would, if detained under this Act as a vagrant in a vagrants' home, be eligible to be discharged therefrom under the provisions of sub-section (1) of section 18, he may, instead of dealing with such person as aforesaid, direct that such person be released and such person shall thereupon be set at liberty.

24. (1) No prosecution for an offence under this Act may be commenced except by, or with the permission of, such officer as may be prescribed in this behalf.

Prosecution and jurisdiction to try offenders.

(2) No offence under this Act shall be triable by any Magistrate other than a Presidency Magistrate or a Magistrate of the first class.

25. All persons empowered to perform any function under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Act XLV of 1860.

Persons to be deemed public servants.

26. No suit, prosecution or other legal proceeding shall lie against any person empowered to perform any function under this Act for anything which is in good faith done or intended to be done under this Act.

Indemnity.

27. [Repeal—Repealed by section 3 and the Second Schedule to West Bengal Act VII of 1948.]

28. (1) The ¹[State] Government may make rules² for carrying out the purposes of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the purposes for which a person may collect money or ask for food or gifts referred to in clause (9) of section 2;
- (b) the constitution of the Board referred to in sub-section (2) of section 3;
- (c) the manner in which the summary inquiry referred to in sub-section (1) of section 7 shall be made;

¹See foot-note 3 on page 305, ante.

²For the Bengal Vagrancy Rules, 1945, see notification No. 2799P.H., dated the 25th September, 1945, published in the *Calcutta Gazette* of 1945, Part I, page 160.

[Ben. Act VII of 1943.]

(Chapter IV.—Penalties and Miscellaneous.—Section 29.)

- (d) the manner in which a vagrant is to be sent to a receiving centre under sub-section (1) of section 8 and the proviso to sub-section (1) of section 10;
- (e) the manner in which a medical officer is medically to examine a vagrant under sub-section (2) of section 8;
- (f) the types of works for which a vagrant may be reported fit under clause (e) of sub-section (3) of section 8;
- (g) the manner in which a vagrant is to be sent to a vagrants' home under sub-section (1) of section 9;
- (h) the manner in and the extent to which the provisions of sub-section (3) of section 9 in respect of children may be relaxed;
- (i) the manner in which the money found with or on, or the proceeds of the sale of other personal effects of, a vagrant may be applied to the welfare of vagrants under section 14;
- (j) the management and discipline referred to in sub-section (1) of section 15 to which vagrants detained in receiving centres and vagrants' homes shall be subject;
- (k) the type of the hard labour which is to form the punishment which may be awarded under sub-section (3) of section 15;
- (l) the manner in which a vagrant may be sent from one vagrants' home to another under section 16;
- (m) the manner in which the Manager of a vagrants' home is to certify under clause (a) of sub-section (1) of section 18 that satisfactory employment has been obtained for a vagrant;
- (n) the amount of the bond referred to in clause (c) of sub-section (1) of section 18;
- (o) the officer referred to in sub-section (1) of section 24.

Continu-
ance of
action
taken
under
Bengal
Ordinance
II of
1943.

29. Any rules made or anything done or any action taken or any proceedings commenced in exercise of any power conferred by or under the Bengal Vagrancy Ordinance, 1943, shall, on the said Ordinance ceasing to be in operation, be deemed to have been made, done, taken or commenced in exercise of powers conferred by or under this Act as if this Act had commenced on the 30th day of July, 1943.

Beti. Ord.
II of 1943.

Bengal Act III of 1944¹

THE BENGAL ORPHANAGES AND WIDOWS' HOMES ACT, 1944.

ADAPTED } The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

The Adaptation of Laws Order, 1950.

[29th June, 1944.]

An Act to provide for the better control and supervision of orphanages, widows' homes and marriage bureaux, in Bengal.

WHEREAS it is expedient to provide for the better control and supervision of orphanages, widows' homes and marriage bureaux, in Bengal;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Orphanages and Widows' Homes Act, 1944.

(2) It extends to the whole of ²[West Bengal].

(3) It shall come into force in such areas on such dates as the ³[State] Government may, by notification in the *Official Gazette*, direct.

Short title, extent and commencement.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(1) "Calcutta" means the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866, together with the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866;

(2) "marriage bureau" means an institution, by whatever name it may be called, which negotiates the marriages of persons and includes a place where females of any age are kept or intended to be kept by such institution for the said purpose;

(3) "orphan" means a boy or girl under eighteen years of age who has lost his or her father or has been abandoned by his or her parents or guardians;

Ben. Act
IV of 1866.

Ben. Act
II of 1866.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 26th September, 1940, Part IVA, page 278; the Report of the Select Committee was presented to the Assembly on the 3rd March, 1944; for the proceedings of the Assembly, see the proceedings of the meeting, of the Bengal Legislative Assembly held on the 13th September and 4th December, 1940, 4th April, 20th August, 1941, 23rd September, 1943, and 3rd March, 1944; for the proceedings of the Council, see the proceedings of the meetings of the Bengal Legislative Council, held on the 20th March, 21st April and 12th May, 1944.

²The words within square brackets were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³The word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Sections 3—5.)

- (4) "orphanage" means an institution, by whatever name it may be called, where orphans are kept or intended to be kept;
- (5) "prescribed" means prescribed by rules made under this Act;
- (6) "widow" includes a woman abandoned by her husband;
- (7) "widows' home" means an institution, by whatever name it may be called, where widows or females of any age are kept or intended to be kept;

Act not to apply to certain institutions.

3. Nothing in this Act shall apply to—

- (a) a reformatory school, an industrial school or an auxiliary home established or certified by the ¹[State] Government under the Bengal Children Act, 1922;
- (b) any institution recognised as a place of suitable custody under sub-section (1) of section 28 of the Bengal Children Act, 1922, or under any rule made under clause (b) of sub-section (2) of section 27 of the Bengal Suppression of Immoral Traffic Act, 1933; or
- (c) any orphanage or widows' home established and maintained by the ¹[State] Government.

Ben. Act II of 1922.

Ben. Act VI of 1933.

Prohibition to open or to carry on an orphanage, a widows' home or a marriage bureau without a licence.

4. No person shall without, or otherwise than in conformity with the conditions of, a licence granted under this Act in the prescribed form open or carry on an orphanage, a widows' home or a marriage bureau:

Provided that a person carrying on any such institution at the commencement of this Act shall be allowed a period of six months from such commencement to obtain such licence.

Licence to open or to carry on an orphanage, a widows' home or a marriage bureau.

5. (1) Subject to the provisions of sub-section (2) the Commissioner of Police in Calcutta and elsewhere the District Magistrate may, on receipt of an application in the prescribed form containing the prescribed particulars, grant to any person a licence for the opening and carrying on or the carrying on of an orphanage, a widows' home or a marriage bureau (hereinafter referred to as the said institution) on such conditions as may be prescribed in this behalf.

¹See foot-note 3 on page 315, *ante*.

of 1944.]

(Sections 6—8.)

(2) The Commissioner of Police or the District Magistrate, as the case may be, shall refuse to grant a licence under sub-section (1) unless he is satisfied—

- (a) that for the control and supervision of the said institution a society has, subject to such rules as may be made in this behalf by the ¹[State] Government, been formed and registered under the Societies Registration Act, 1860, the provisions of which shall, notwithstanding anything to the contrary contained in that Act, apply to every such institution as if such institution is a charitable society;
- (b) that the members of the society are respectable persons of the town or district where the said institution is or is to be located;
- (c) that the said institution is or is to be located in a healthy locality and the accommodation therein is sufficient for the purpose for which it is to be opened or is being carried on.

XXI of
1860

6. A licence granted under section 5 may be suspended or cancelled by the authority which granted it—

Suspension or cancellation of licence.

- (a) if there is any contravention of any of the provisions of this Act or any breach of the conditions subject to which the licence was granted, or
- (b) if the institution in respect of which the licence was granted has ceased to fulfil the conditions specified in clauses (a) to (c) of sub-section (2) of section 5.

7. The Commissioner of Police or the District Magistrate, or any Deputy Commissioner of Police authorised in writing in this behalf by the Commissioner of Police or any Magistrate authorised in writing in this behalf by the District Magistrate or any person not in the service of the ²[Government] when authorised in writing in this behalf in Calcutta by the Commissioner of Police or elsewhere by the District Magistrate may enter and inspect any orphanage, widows' home or marriage bureau at any time by day or night and the society having control of such institution and the persons in charge thereof shall not refuse such entry or inspection.

Inspection of the institution.

8. Whoever acts in contravention of any of the provisions of this Act shall on conviction be punished with fine which may extend to five hundred rupees, and in the case where the contravention is a continuing one with further fine which may

Penalty.

¹See foot-note 3 on page 315, *ante*.

²This word within square brackets was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

[Ben. Act III of 1944.]

(Sections 9—11.)

extend to fifty rupees for every day after the first during which such contravention continues subsequent to such conviction.

Prosecu-
tion.

9. No prosecution under this Act shall be instituted except with the previous sanction of the Commissioner of Police in Calcutta and the District Magistrate elsewhere.

Jurisdic-
tion.

10. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try an offence punishable under this Act.

Power to
make
rules.

11. (1) The ¹[State] Government may subject to the condition of previous publication make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for the following matters, namely:—

- (a) the form of licence to be granted under this Act;
- (b) the form of application for licence under sub-section (1) of section 5 and the particulars to be contained in such application;
- (c) the conditions subject to which licences may be granted; and
- (d) the formation of a society for the control and supervision of an orphanage, a widows' home or a marriage bureau under clause (a) of sub-section (2) of section 5.

¹See foot-note 3 on page 315, *ante*.

Bengal Act IV of 1944

THE BENGAL AGRICULTURAL INCOME-TAX ACT, 1944.

CONTENTS.

PRELIMINARY.

SECTION.

1. Short title, extent and commencement.
2. Definitions.

CHAPTER I.

3. Charge of agricultural income-tax.
4. Total agricultural income.

CHAPTER II.

COMPUTATION OF AGRICULTURAL INCOME-TAX AND ALLOWANCES.

5. Heads of charge to agricultural income-tax.
6. Computation of tax and allowances under the head "Agricultural income from rent or revenue".
7. Computation of tax and allowances under the head "Agricultural income from agriculture".
8. Computation of tax on mixed incomes.
9. Computation of allowances where estates extend beyond West Bengal.
10. Exemptions from assessment of tax.
11. Prevention of double relief.
12. Inclusions to prevent evasion of tax.

CHAPTER III.

LIABILITY TO ASSESSMENT IN SPECIAL CASES.

13. Liability of guardian, trustee, agent, receiver or administrator.
14. Liability of Court of Wards, Administrator-General and Official Trustees, etc.
15. Rateable payment by guardian, trustee, etc.
16. Residuary provisions for computation and recovery of tax under sections 13 and 14.
17. Tax deemed to be paid on others' behalf by companies, firms and associations.
18. Liability of person deriving agricultural income jointly for himself and others.
19. Liability in case of discontinued firms or associations.
20. Agents to include persons treated as such.

CHAPTER IV.

INCOME-TAX AUTHORITIES AND APPELLATE TRIBUNAL.

21. Agricultural income-tax authorities.
22. Appellate Tribunal.

CHAPTER V.

MACHINERY OF ASSESSMENT.

23. Certificate by company to share-holders receiving dividends.
24. Return of agricultural income.
25. Assessment.
26. Set off of loss in computing taxable agricultural income.
27. Tax of deceased person payable by representative.
28. Assessment in case of discontinued firm or association.
29. Change in constitution of a firm or ownership of business.
30. Assessment after partition of a Hindu undivided family.

SECTION.

- 31. Cancellation of assessment where cause is shown.
- 32. Penalty for concealment of income.
- 33. Notice of demand.
- 34. Appeal against assessment under this Act.
- 35. Hearing of appeal.
- 36. Procedure of appeal to the Appellate Tribunal.
- 37. Power of revision by Commissioner.
- 38. Income escaping assessment.
- 39. Rectification of mistake.
- 40. Tax to be calculated to nearest anna.
- 41. Power to take evidence on oath, etc.
- 42. Power to call for information.
- 43. Power to inspect the register of members of any company.

CHAPTER VI.**RECOVERY OF TAX AND PENALTIES.**

- 44. Tax when payable.
- 45. Mode and time of recovery.
- 46. Recovery of penalties.

CHAPTER VII.**REFUNDS.**

- 47. Refunds.
- 48. Refunds of tax deemed to have been paid by companies, firms and associations on behalf of others.
- 49. Reciprocal relief in respect of double taxation with other Governments.
- 50. Power to set off amount of refunds against tax remaining payable.
- 51. Power of representative of deceased person or persons disabled to make claim on his behalf.
- 52. Limitation of claims for refunds.

CHAPTER VIII.**OFFENCES AND PENALTIES.**

- 53. Failure to make payments or deliver returns or statements or allow inspections.
- 54. False statement in declaration.
- 55. Prosecution to lie at the instance of Commissioner.
- 56. Disclosure of information by public servant.

CHAPTER IX.**MISCELLANEOUS.**

- 57. Power to make rules.
- 58. Appearance by authorised representative.
- 59. Receipts to be given.
- 60. Service of notices.
- 61. Place of assessment.
- 62. Indemnity.
- 63. Statement of case by Appellate Tribunal to High Court.
- 64. Reference to be heard by a Bench of the High Court, and appeal to lie in certain cases to the Supreme Court.
- 65. Bar of suits in Civil Courts.
- 66. Computation of periods of limitation.

THE SCHEDULE.

**THE BENGAL AGRICULTURAL INCOME-TAX ACT,
1944.**

An Act to provide for the imposition of a tax on agricultural income derived from land situated in Bengal.

Preliminary.

Short title,
extent and
commence-
ment.

Definitions.

(a) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land revenue in ³[a State] or subject to a local rate assessed and collected by officers of the ⁴[Government] as such;

"The word "Government" within square brackets was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Preliminary.—Section 2.)

- (b) any income derived from such land by—
- (i) agriculture, or
 - (ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or
 - (iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in item (ii);
- (c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver of rent-in-kind of any land with respect to which, or the produce of which, any operation mentioned in items (ii) and (iii) of sub-clause (b) is carried on:

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or the receiver of the rent-in-kind by reason of his connection with the land, requires as dwelling house, or as a store house or other out-building;

- (2) "Agricultural Income-tax Officer" means a person appointed to be an Agricultural Income-tax Officer under section 21;
- (3) "assessee" means a person by whom agricultural income-tax is payable;
- (4) "Assistant Commissioner" means the person appointed as Assistant Commissioner of Agricultural Income-tax under section 21;
- (5) "Commissioner" means the persons appointed to be the Commissioner of Agricultural Income-tax,¹[West Bengal], under section 21;
- (6) "company" means a company as defined in the²Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament³[of the United Kingdom] or of Royal Charter or Letters Patent or of an Act of the Legislature of a British possession or under a law of⁴[a part B State], and includes any foreign association carrying on

VII of
1913.

¹See foot-note 2 on page 321, *ante*.

²The Indian Companies Act, 1913 (VII of 1913) was repealed and re-enacted by the Companies Act, 1956 (I of 1956).

³These words within square brackets were inserted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

⁴These words and letter within square brackets were substituted for the words "an Indian State" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1944.]

(Preliminary.—Section 2.)

business in ¹[India] or owing or possessing any interest in land in ²[West Bengal] whether such association is incorporated or not, and whether its principal place of business is situated in ¹[India] or not, which the ³[State] Government may, by general or special order, declare to be a company for the purposes of this Act;

- (7) “firm”, “partner” and “partnership” have the same meanings respectively as in the Indian Partnership Act, 1932, provided that the expression “partner” includes any person who being a minor has been admitted to the benefits of partnership;
- (8) “Hindu undivided family” means a Hindu undivided family governed by *mitakshara* law;
- (9) “person” includes a Hindu undivided family, a firm, ⁴[and a company];
- (10) “prescribed” means prescribed by rules made under this Act;
- (11) “previous year” means—

(a) the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made, if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have been so made up;

(b) such period as may be determined by the Commissioner in the particular case of any person or class of persons;

(c) in the case of income which is partially agricultural income from land and partially income chargeable under the Indian Income-tax Act, 1922, under the head “Business”, and the business concerned has been newly set up in the financial year preceding the year for which

IX of
1932.

XI of
1922.

¹The words “a Province of India” were originally substituted for the words “British India” by paragraph (1) of Article 3 of, and the Schedule to the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948, and thereafter the words “a Province of” were omitted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

²See foot-note 2 on page 321, *ante*.

³The word “State” within square brackets was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴These words within square brackets were substituted for the words “a company and the Ruler of an Indian State” by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

(Preliminary.—Section 2.)

the assessment is to be made, the period from the date of the setting up of such business to the 31st day of March next following, or to the last day of the period determined under sub-clause (b), or, if the accounts of the assessee are made up to some other date than the 31st day of March and the case is not one for which a period has been determined by the Commissioner under sub-clause (b), then at the option of the assessee, the period from the date of the setting up of such business to such other date:

Provided that when such other date does not fall between the setting up of such business and the next following 31st day of March it shall be deemed that there is no previous year:

Provided further that where in this clause an option is exercisable by the assessee it shall not be exercisable more than once except with the consent of the Agricultural Income-tax Officer and upon such conditions as such officer may think fit:

Provided further that where in this clause an option is exercisable by the assessee and he has been assessed after he has exercised such option it shall not be exercisable by him again so as to vary the meaning of the expression "previous year" as then applicable except with the consent of the Agricultural Income-tax Officer:

Provided also that where the assessee is a partner in a firm, the expression "previous year" in respect of his share of the agricultural income of the firm means the previous year as determined for the assessment of the agricultural income of the firm;

(12) "principal officer" used with reference to ¹[a Part B State], a company or any other association means—

(a) (i) the manager or agent in ²[West Bengal] of the Ruler of the ³[Part B State]), or

(ii) the secretary, treasurer, manager or agent of the company or association; or

¹See foot-note 4 on page 322, *ante*.

²See foot-note 2 on page 321, *ante*.

³The words and letter "Part B State" within square brackets were substituted for the words "Indian State" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1944.]

(Preliminary.—Section 2.)

(b) any individual connected with the ¹[Part B State], company or association upon whom an Agricultural Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof;

Act XLV
of 1860.

(13) “public servant” has the same meaning as in the Indian Penal Code;

(14) “received” used with reference to the receipt of the agricultural income by a person shall include—

(1) receipt by an agent or servant on behalf of a principal or master respectively,

(2) receipts by other persons which are deemed to be his receipts under the provisions of this Act, and shall also include receipts of agricultural income by way of adjustment of accounts with any other person;

(16) “total agricultural income” means the total amount of agricultural income referred to in section 4 and computed in the manner laid down in this Act;

(17) “total world income” means the sum of—

XI of
1922.

(a) the total world income as defined in the Indian Income-tax Act, 1922, and

(b) the total agricultural income as defined in this Act, and

(c) the agricultural income derived from land in ³[any State of India other than West Bengal]; and

(18) “written down value” means in respect of any irrigation or protective work, or any machinery, plant or other capital asset,—

(a) in the case of assets acquired in the previous year, the actual cost to the assessee,

(b) in the case of assets acquired before the previous year, the actual cost to the assessee less all depreciation allowable to him under this Act in respect of such work, machinery, plant or other asset as the case may be.

¹See foot-note 3 on page 324, *ante*.

²Clause 15 was omitted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

³The words “any Province of India other than West Bengal” were originally substituted for the words “British India excepting Bengal” by the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948, and thereafter the word “State” was substituted for the word “Province” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Chapter I.—Sections 3, 4.)

CHAPTER I.

Charge of
agricultural
income-
tax.

3. Agricultural income-tax shall be charged for each financial year in accordance with and subject to the provisions of this Act, at the rate or rates specified in the Schedule in respect of the total agricultural income of the previous year of every individual, Hindu undivided family, company, firm or other ¹[association of persons] and every Ruler of ²[a Part B State]:

³[Provided that where any property from which agricultural income is derived is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not, in respect of such property, be assessed as an association of persons, but the share of each such person in the agricultural income from the property shall be included in his total agricultural income:]

Provided ⁴[further] that agricultural income-tax shall not be charged on the agricultural income of the Central Government or any ⁵[State] Government or any local authority.

Total
agricul-
tural in-
come.

4. Subject to the provisions of this Act, the total agricultural income of any previous year of any person comprises all agricultural income derived from land situated within ⁶[West Bengal and received by him within or without ⁷[West Bengal], including any Local Cess and Education Cess payable in respect of such land to such person under the Cess Act, 1880, and the Bengal (Rural) Primary Education Act, 1930, respectively, but does not include—

Ben. Act
IX of
1880.
Ben. Act
VII of
1930.

(a) any agricultural income derived from land situated without ⁶[West Bengal],

(b) any agricultural income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes or in the case of Muslim trusts commonly known as Wakf-al-al-aulads, the income applied thereto.

Explanation.—In this section “charitable purpose” includes relief of the poor, education, medical relief and the advancement of any other object of general public utility.

¹These words “association of persons” within square brackets were substituted for the words “association of individuals” by section 2 of the West Bengal Agricultural Income-tax (Amendment) Act, 1949 (West Ben. Act III of 1949).

²See foot-note 4 on page 322, *ante*.

³These words within square brackets were inserted by section 3(a) of the West Bengal Agricultural Income-tax (Amendment) Act, 1949 (West Ben. Act III of 1949).

⁴This word “further” was inserted by section 3 (b), *ibid*.

⁵See foot-note 3 on page 323, *ante*.

⁶See footnote 2 or page 321, *ante*.

of 1944.]

(Chapter II.—Computation of agricultural income-tax and allowances.—Sections 5, 6.)

CHAPTER II.

Computation of agricultural income-tax and allowances.

5. Save as otherwise provided by this Act, the following heads of agricultural income shall be chargeable to agricultural income-tax, namely:—

Heads of charge to agricultural income-tax.

- (i) agricultural income as defined in sub-clause (a) of clause (1) of section 2 (hereinafter referred to as "agricultural income from rent or revenue");
- (ii) agricultural income as defined in sub-clause (b) of clause (1) of section 2 (hereinafter referred to as "agricultural income from agriculture"),

in the manner hereinafter appearing.

6. Agricultural income-tax shall be payable by an assessee under the head "Agricultural income from rent or revenue" in respect of all rent and revenue, including any Local Cess or Education Cess referred to in section 4 derived from land referred to in sub-clause (a) of clause (1) of section 2 included in his total agricultural income and received in the previous year, subject to the following allowances, namely:—

Computation of tax and allowances under the head, "Agricultural income from rent or revenue".

- (1) any sums paid by him in the previous year on account of—
 - (i) land revenue or rent,
 - (ii) any local rate or cess including Education Cess in respect of such land;
 - (2) where his interest in such land is subject to a mortgage or other capital charge, the amount of any interest paid by him in the previous year in respect of such mortgage or charge, and where such land has been acquired, reclaimed or improved by him by the use of borrowed capital, the amount of any interest paid by him in the previous year in respect of such capital:
- Provided that the interest allowable under this clause shall not exceed the interest which the assessee is liable to pay in respect of such mortgage, charge or capital as a borrower under section 30 of the Bengal Money-lenders Act, 1940;
- (3) any sum paid by him in the previous year as interest on any loans taken by him under the Agriculturists' Loans Act, 1884, or the Land Improvement Loans Act, 1883, in respect of such land;
 - (4) in respect of the maintenance of any irrigation or protective work or other capital asset the amount paid in the previous year on account thereof.

Ben. Act
X of 1940.

XII of
1884.
XIX of
1883.

(Chapter II.—*Computation of agricultural income-tax and allowances.*—Section 6.)

Explanation.—“Maintenance” includes current repairs and includes also in the case of protective dykes and embankments all such work as may be necessary from year to year for repairing any damage or destruction caused by flood, or other natural causes;

- (5) depreciation at the prescribed rate in respect of any irrigation or protective work or other capital asset, constructed or acquired after the commencement of this Act for the benefit of the land from which such agricultural income is derived or for the purpose of deriving such agricultural income from such land;
- (6) any sum paid by him in the previous year as premium in order to effect any insurance against loss of or damage to such land or any crops to be raised or cattle to be reared thereon;
- (7) in respect of the cost of collection of such rent or revenue including the cost of maintenance of any *katchari* or other capital assets and any expenses of litigation, a sum equal to fifteen *per centum* of the total amount of rent or revenue which accrued to him in the previous year in respect of the land from which such rent or revenue is derived:

Provided that in the case of an assessee who can produce his accounts audited and certified to be correct by an accountant, and at the option of such assessee recorded in writing the allowance shall be, instead of such sum, the actual cost of collection incurred during the previous year as determined by the Agricultural Income-tax Officer on the basis of such accounts, subject to a maximum equal to twenty *per centum* of the total amount of rent or revenue which accrued to him in the previous year in respect of the land from which rent or revenue is derived.

Explanation.—“Accountant” in this proviso has the same meaning as in clause (iii) of sub-section (2) of section 58 and includes the Accountant-General, ¹[West Bengal], and any person auditing accounts under his direction and control:

Provided further that the assessee, having once exercised the option to claim the actual cost on the basis of his accounts as the allowance admissible as aforesaid, shall not be entitled in any future year to claim instead the alternative allowance admissible except with the previous sanction of the Assistant Commissioner;

¹See foot-note 2 on page 321, *ante*.

of 1944.]

(Chapter II.—Computation of agricultural income-tax and allowances.—Section 7.)

- (8) in the assessment made for each of the three financial years ending on the 31st March, 1945, the 31st March, 1946, the 31st March, 1947, respectively, in respect of the cost of collection of such rent or revenue and in addition to the allowance specified in clause (7), if the total amount of the rent or revenue received by the assessee in the previous year exceeds the total amount of rent or revenue which accrued to such assessee in the previous year by more than five *per centum* of such amount accrued, a sum equal to one-fifth of the amount by which such amount received exceeds such amount accrued;
- (9) when rent derived from such land is rent in kind the cost incurred by the assessee—
 - (i) in performing any process contemplated in item (ii) of sub-clause (b) of clause (1) of section 2 for rendering the produce which comprises such rent in kind fit to be taken to market;
 - (ii) in transporting such produce to market;
 - (iii) in maintaining in good repair any agricultural implements or machinery and in providing for the upkeep of cattle for the purposes of such process or transport;
- (10) any other expenditure of the assessee, not being in the nature of capital expenditure or personal expenditure, laid out wholly and exclusively for the purpose of deriving such agricultural income from such land.

7. Agricultural income-tax shall be payable by an assessee under the head "Agricultural income from agriculture" in respect of all agricultural income derived from land referred to in sub-clause (b) of clause (1) of section 2 included in his total agricultural income and received by him in the previous year subject to the following allowances, namely:—

Computation of tax and allowances under the head, "Agricultural income from agriculture."

- (1) the cost incurred by the assessee in the previous year:—
 - (i) in cultivating such land or raising livestock thereon;
 - (ii) in performing any process contemplated in item (ii) of sub-clause (b) of clause (1) of section 2 for rendering the produce of such land fit to be taken to market;
 - (iii) in transporting such produce or livestock to market; and

(Chapter II.—Computation of agricultural income-tax and allowances.—Section 7.)

- (iv) in maintaining agricultural implements and machinery in good repair and in providing for the upkeep of cattle for the purpose of such cultivation, process, or transport:

Provided that in the case of an agricultural income derived from land possessed by an individual or a Hindu undivided family and cultivated by such individual or by the members of such family with or without the aid of servants or hired labourers or of both, the allowance admissible under this clause shall, instead of such cost, be a sum equal to fifty *per centum* of the market value of the produce raised from such land;

- (2) any sum paid by him in the previous year on account of—
- (i) land revenue or rent;
 - (ii) any local rate or cess including Education Cess, in respect of such land;
- (3) where his interest in such land is subject to a mortgage or other capital charge, the amount of any interest paid by him in the previous year in respect of such mortgage or charge, and where such land has been acquired, reclaimed or improved by him by the use of borrowed capital, the amount of any interest paid by him in the previous year in respect of such capital:

Provided that the interest allowable under this clause shall not exceed the interest which the assessee is liable to pay in respect of such mortgage, charge or capital as a borrower under section 30 of the Bengal Money-lenders Act, 1940;

- (4) any sum paid by him in the previous year as interest on any loans taken by him under the Agriculturists' Loans Act, 1884, or the Land Improvement Loans Act, 1883, in respect of such land;
- (5) in respect of the maintenance of any irrigation or protective work or other capital assets the amount paid in the previous year on account thereof.

Explanation.—“Maintenance” includes current repairs and includes also in the case of protective dykes and embankments all such work as may be necessary from year to year for repairing any damage or destruction caused by flood or other natural causes;

- (6) depreciation at the prescribed rate in respect of any irrigation or protective work or other capital asset constructed or acquired after the commencement of this Act for the benefit of the land from

Ben. Act
X of 1940.

XII of
1884.
XIX of
1883.

of 1944.]

(Chapter II.—Computation of agricultural income-tax and allowances.—Section 8.)

which such agricultural income is derived or for the purpose of deriving such agricultural income from such land;

- (7) any sum paid by him in the previous year as premium in order to effect any insurance against loss of or damage to such land or any crops to be raised or cattle to be reared thereon;
- (8) in respect of any machinery or plant used exclusively for agricultural purposes which has been sold or discarded, the amount by which the written down value of the machinery or plant exceeds the amount for which the machinery or plant is actually sold or its scrap value:

Provided that such amount is actually written off in the books of the assessee;

- (9) any other expenditure of the assessee not being in the nature of capital expenditure or personal expenditure laid out wholly and exclusively for the purpose of deriving such agricultural income from such land;

- (10) any other sum which may be prescribed.

8. (1) In the case of income which is partially agricultural income assessable under this Act and partially income chargeable under the Indian Income-tax Act, 1922, under the head "Business", agricultural income-tax shall be payable by an assessee in respect of the market value determined in the manner prescribed of any agricultural produce which has been raised by the assessee or received by him as rent-in-kind and which has been utilised as raw material in such business or the sale receipts of which are included in the accounts of the business, subject to any allowances which may be permissible under the provisions of this Act:

Computation of tax on mixed incomes.

XI of 1922.

Provided that,—

- (a) where for the purposes of the assessment of income-tax under the Indian Income-tax Act, 1922, the market value of the said produce has been determined the market value as so determined shall be taken to be the market value for the purposes of this sub-section;
- (b) where there is a common charge on both agricultural income assessable under this Act and income chargeable under the Indian Income-tax Act, 1922, and such charge is an allowance permissible both under this Act and the Indian Income-tax Act, 1922, then, if for the purposes of the Indian Income-tax Act, 1922, the part of such charge which is to be deemed to be the allowance permissible under that Act has been determined under

(Chapter II.—Computation of agricultural income-tax and allowances.—Section 8.)

that Act, the remaining part of such charge shall be deemed to be the allowance to which agricultural income assessable under this Act is subject.

(2) Notwithstanding anything contained in this Act, in the case of tea [the plant *Camellia Thea* (Linn.)] grown in ¹[West Bengal] and sold by the grower himself or his agent after manufacture, the agricultural income derived therefrom shall, as long as for the purposes of assessment of income-tax under the Indian Income-tax Act, 1922, the income derived therefrom is computed under that Act in such manner as to include agricultural income, be deemed to be that portion of such income as so computed on which income-tax is not payable under that Act, and agricultural income-tax at the rates specified in the Schedule shall be payable on the whole of such agricultural income as so computed. XI of 1922.

Explanation.—Where such income is derived from lands partially in and partially without ¹[West Bengal], agricultural income-tax shall be levied under this Act on such portion of that income as is attributable to lands in ¹[West Bengal] according to the following principles, namely,—

- (i) where the proportion of such income attributable to lands in ¹[West Bengal] has been determined for the purposes of the Indian Income-tax Act, 1922, such apportionment shall be accepted as determining for the purposes of this sub-section the proportion of such income attributable to lands in ¹[West Bengal];
- (ii) where the proportion of such income attributable to lands in ¹[West Bengal] cannot be determined by the method specified in clause (i) of this Explanation such proportion shall be determined in such manner as may be prescribed.
- (3) For the purpose of the assessment of agricultural income-tax under this section or any rule made thereunder a certified copy of an order of an assessment under the Indian Income-tax Act, 1922, or a certified copy of an order of any appellate or revising authority or of the High Court or of ²[the Supreme Court] altering or amending such order of assessment under the provisions of that Act shall be conclusive evidence of the contents of such order.

¹See foot-note 2 on page 321, *ante*.

²These words within square brackets were substituted for the words "His Majesty in Council" by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

of 1944.]

(Chapter II.—Computation of agricultural income-tax and allowances.—Sections 9—11.)

9. Where an allowance admissible under sections 6, 7 or 8 is in respect of a common payment made for the purpose of deriving agricultural income from land part of which is within and part without ¹[West Bengal], such allowance shall be calculated as such proportion of the common payment as the agricultural income derived from the land within ²[West Bengal] bears to the agricultural income derived from all the land both within and without ¹[West Bengal] in respect of which such common payment is made.

Computation of allowances where estates extend beyond West Bengal.

10. Agricultural income-tax shall not, subject to the provisions of section 11, be levied on any agricultural income.
Page 333—

Exemptions from assessment of tax.

For clause (a) of section 10, substitute the following clause, namely:—

“(a) any agricultural income which he receives as his share of agricultural income of a firm or association of persons, which has paid the tax in respect of the said agricultural income;”.

(Substituted by West Ben. Act XXVIII of 1957, section 2.)

(b) any sum which he receives as a member of a Hindu undivided family, the agricultural income of which has already been taxed;

(c) any sum paid by such person—

(i) to effect an insurance on the life of such person or on the life of a wife or husband or minor child of such person or in respect of a contract for a deferred annuity on the life of such person or on the life of a wife or husband or minor child of such person;

(ii) where the assessee is a Hindu undivided family, to effect an insurance on the life of any male member of such family or of the wife or a minor child of any such member:

Provided that the aggregate of any sums exempted from assessment to agricultural income-tax under this clause shall not exceed one-sixth of the total agricultural income of the assessee.

11. In computing the amount of any allowance or relief from assessment due under sections 6, 7, 8 or clause (c) of section 10 no part of such allowance or relief shall be included which constitutes a ground for relief from Indian Income-tax under the provisions of the Indian Income-tax Act, 1922.

Prevention of double relief.

¹See foot-note 2 on page 321, ante.

²See foot-note 1 on page 326, ante.

(Chapter II.—*Computation of agricultural income-tax and allowances.*—Chapter III.—*Liability to assessment in special cases.*—Sections 12, 13.)

Inclusions
to prevent
evasion of
tax.

12. In computing the total agricultural income of any individual for the purpose of assessment there shall be included—

- (a) so much of the total agricultural income of a wife or minor child of such individual as arises directly or indirectly—
 - (i) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart, .
 - (ii) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual otherwise than for adequate consideration ;
- (b) so much of the total agricultural income of any person or association of persons as arises from assets transferred otherwise than for adequate consideration to the person or association by such individual for the benefit of his wife or minor child or both.

CHAPTER III.

Liability to assessment in special cases.

Liability
of guar-
dian,
trustee,
agent,
receiver
or admi-
nistrator.

13. Where any person receives any agricultural income derived from land,

- (a) as a guardian, trustee or agent of any person being a minor, lunatic or idiot or person residing without ¹[West Bengal], interested in such land or the agricultural income derived therefrom, or
- (b) as a receiver or administrator appointed by or under the order of any Court in respect of such land or the agricultural income derived therefrom,

any agricultural income-tax payable under this Act on such income shall be levied upon and recoverable from such guardian, trustee, agent, receiver or administrator in like manner and to the same amount as would be leviable upon and recoverable from any such person if in direct receipt of such agricultural income and such guardian, trustee, agent, receiver or administrator shall be deemed to be the assessee in respect of the agricultural income-tax so payable by such minor, lunatic, idiot, person residing without ¹[West Bengal], or other person, as the case may be, and all the provisions of this Act shall apply accordingly.

¹See foot-note 2 on page 321, ante.

of 1944.]

(Chapter III.—Liability to assessment in special cases.—
Sections 14—17.)

VI of
1913.

14. In the case of agricultural income chargeable to agricultural income-tax under this Act derived from land which is received by the Court of Wards, an Administrator-General or an Official Trustee or any trustee or trustees [appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise] (including the trustee or trustees under any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913), or a common manager the agricultural income-tax payable under this Act on such income shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee or such other trustee or trustees or such common manager in the like manner and to the same amount as it would be leviable upon or recoverable from any person on whose behalf such agricultural income is received and all the provisions of this Act shall apply accordingly.

Liability of Court of Wards, Administrator-General and Official Trustees, etc.

15. Where the agricultural income received on behalf of any person by any trustee, agent, receiver, Court of Wards, Official Trustee or common manager referred to in sections 13 and 14 is part only of the total agricultural income of such person, the agricultural income-tax payable under this Act shall be assessed on the total agricultural income of such person and the amount of tax as so assessed shall be levied upon and recoverable from such trustee, agent, receiver, Court of Wards, Official Trustee or common manager and such person rateably according to the portion of the total agricultural income of such person received by such trustee, agent, receiver, Court of Wards, Official Trustee or common manager, as the case may be, and the portion received by such person.

Rateable payment by guardian, trustees, etc.

16. (1) In any case falling under the provisions of sections 13 and 14 where any agricultural income or any part thereof is not specifically received on behalf of any one person, or where the individual shares of the persons on whose behalf such income is received are indeterminate or unknown, the tax shall be levied and recoverable at the rate applicable to the total amount of such income.

Residuary provisions for computation and recovery of tax under sections 13 and 14.

(2) Nothing contained in sections 13 and 14 shall prevent either the direct assessment of a person therein referred to on whose behalf agricultural income is received, or the recovery from such person of the agricultural income-tax payable in respect of such income.

For section 17, substitute the following section, namely:—

17. A firm or other association of persons which has paid agricultural income-tax under this Act in respect of its agricultural income as such firm or association

“Tax deemed to be paid on others’ behalf by firms

s] Tax deemed to be paid on others’ behalf by companies, firms and associations.

The Bengal Agricultural Income-tax Act, 1944.

[**Ben. Act IV**

*(Chapter III.—Liability to assessment in special cases.—
Sections 18—20.)*

association shall be deemed for the purposes of section 48 to have paid agricultural income-tax on behalf of the shareholders of such company, the partners of such firm or the members of such association, as the case may be, on such part of the agricultural income of every individual share-holder, partner or member as represents the portion of the agricultural income of such company, firm or association which is received by such share-holder, partner or member.

Liability
of person
deriving
agricul-
tural in-
come
jointly
for him-
self and
others.

18. (1) Save as provided for in sections 13, 14 and 17 if a person receives agricultural income derived from land and such income is derived partly for his own benefit and partly for the benefit of beneficiaries or wholly for the benefit of beneficiaries, agricultural income-tax shall be assessed on the total agricultural income derived from such land at the rate which would be applicable if such income had been derived solely for his own benefit, and agricultural income-tax at such rate shall be leviable upon and recoverable from such person in respect of such income.

(2) Any person receiving agricultural income as referred to in sub-section (1) may, before paying to any beneficiary any share of such agricultural income to which such beneficiary is entitled, deduct from such share the amount of agricultural income-tax or its equivalent value in kind if such share is paid in kind rateably paid in respect of such share.

Explanation.—In this section “beneficiary” means a person entitled according to law to a portion of the agricultural income derived from such land.

Liability
in case of
discon-
tinued
firms or
associa-
tions.

19. Where agricultural income is received by a firm or ¹[association of persons] and the business of such firm or association is discontinued or such firm or association is dissolved every person who was a partner of such firm or member of such association at the time of such discontinuance or dissolution shall be jointly and severally liable to assessment on such agricultural income and for the amount of agricultural income-tax payable under this Act by such firm or association, and all the provisions of this Act shall, so far as may be, apply to such assessment.

Agents to
include
persons
treated as
such.

20. Any person employed by or on behalf of a person residing without ²[West Bengal] or through whom in the course of any business connection such person is in the receipt of any agricultural income upon whom the Agricultural Income-tax Officer has caused a notice to be served of

¹See foot-note 1 on page 326, *ante*.

²See foot-note 2, on page 321, *ante*.

of 1944.]

(Chapter IV.—Income-tax Authorities and Appellate Tribunal.—Sections 21, 22.)

his intention of treating such person as the agent of the non-resident person, shall for the purposes of this Act be deemed to be such agent:

Provided that no person shall be deemed to be the agent of a non-resident person unless he has had an opportunity of being heard by the Agricultural Income-tax Officer as to his liability.

CHAPTER IV.

Income-tax Authorities and Appellate Tribunal.

21. (1) There shall be the following classes of agricultural income-tax authorities for the purposes of this Act, namely:—

Agricultural income-tax authorities.

(a) the Commissioner of Agricultural Income-tax, ¹[West Bengal];

(b) the Assistant Commissioner of Agricultural Income-tax, ¹[West Bengal];

(c) ¹[West Bengal] Agricultural Income-tax Officers.

(2) The authorities specified in sub-section (1) shall be appointed by the ²[State] Government.

(3) The Commissioner of Agricultural Income-tax, ¹[West Bengal], shall in respect of the whole of ¹[West Bengal] exercise the powers conferred and perform the duties imposed on him by this Act and by such rules as may be prescribed.

(4) The Assistant Commissioner of Agricultural Income-tax ¹[West Bengal], shall exercise in respect of the whole of ¹[West Bengal] all the powers provided under section 34 and such powers of the Commissioner under this Act or the rules made thereunder, except the powers provided under section 37, as may be delegated to him by the Commissioner with the approval of the ²[State] Government.

(5) The ¹[West Bengal] Agricultural Income-tax Officers shall, in respect of such areas as the ²[State] Government may by notification determine, exercise the powers conferred and perform the duties imposed on them by this Act and by such rules as may be prescribed.

22. (1) The ²[State] Government shall from time to time appoint, as and when may be necessary for the purpose of hearing appeals preferred under section 36, an Appellate Tribunal consisting of three members.

Appellate Tribunal.

¹See foot-note 2 on page 321, ante.

²See foot-note 3 on page 323, ante.

(Chapter IV.—Income-tax Authorities and Appellate Tribunal—Section 22.)

(2) The Appellate Tribunal shall consist of one judicial member, one lawyer member and one accountant member as hereinafter defined,—

- (a) the judicial member shall be a person who has exercised the powers of a District Judge in ¹[West Bengal] or who possesses such qualifications as are normally required for appointment to the post of District Judge in ¹[West Bengal];
- (b) the lawyer member shall be a barrister or advocate of the High Court of Calcutta or a pleader who has practised professionally for a period of not less than five years or an Agricultural Income-tax practitioner who holds a degree in law of any Indian University and has practised professionally for a period of not less than five years.

Explanation.—Agricultural Income-tax practitioner in this clause has the same meaning as in clause (iv) of sub-section (2) of section 58;

- (c) the accountant member shall be a person who has, for a period of not less than six years, practised professionally as a Registered Accountant enrolled on the Register of Accountants maintained by the Central Government under the Auditors Certificate Rules, 1932:

Provided that the ²[State] Government may appoint as accountant member of the Tribunal a person not qualified as required by this clause if the ²[State] Government is satisfied that he is qualified in accountancy and has adequate experience of a character which renders him suitable for appointment to the Tribunal.

(3) The appointment of any member of the Tribunal shall be for such period as the ²[State] Government may determine and the period so determined may be extended from time to time by the ²[State] Government for such further period or periods as the ²[State] Government may consider necessary.

(4) The judicial member shall be President of the Appellate Tribunal and during any period during which the appointment of a lawyer member or an accountant member is not made the President of the Appellate Tribunal shall for the purpose of the admission of appeals under section 36 be deemed to possess all the powers of the Appellate Tribunal.

(5) If the members of the Appellate Tribunal differ in opinion on any point, the point shall be decided according to the opinion of the majority.

(6) The procedure of the Appellate Tribunal in all matters relating to the discharge of its functions, including the place or places of its sittings, shall be as prescribed.

¹See foot-note 2 on page 321, *ante*.

²See foot-note 3 on page 323, *ante*.

of 1944.]

(Chapter V.—Machinery of assessment.—Sections 23, 24.)

CHAPTER V

Machinery

Omit section 23.

(Omitted by West Ben. Act XXVIII of 1957, section 4.)

[No. 2, dated the 1st August, 1958.]
 a certificate to every person
 company has paid or will pay agricultural income-tax on the agricultural income which is being distributed in the shape of dividend and specifying such other particulars as may be prescribed.

the Certificate
 ural by com-
 pany to
 share-
 holders
 receiving
 dividends.

24. (1) The Agricultural Income-tax Officer shall, on or before such date in each year as may be prescribed, give notice, by publication in such newspapers and in such other manner as may be prescribed requiring every person whose total agricultural income during the previous year exceeded the maximum amount which is not chargeable to agricultural income-tax to furnish, within such period not being less than sixty days as may be specified in the notice, a return, in the prescribed form and verified in the prescribed manner, setting forth (along with such other particulars as may be required by the notice) his total agricultural income during that year:

Return of
 agricul-
 tural
 income.

Provided that the Agricultural Income-tax Officer may in his discretion extend the date for the delivery of the return in the case of any person or class of persons and shall in the case of agricultural income assessable under section 8 allow such extension of such date as may be necessary to enable the assessee to file any certified copy of an assessment order under the Indian Income-tax Act, 1922.

KI of
 1922.

(2) In the case of any person whose [total agricultural income] is, in the Agricultural Income-tax Officer's opinion, of such an amount as to render such person liable to agricultural income-tax, the Agricultural Income-tax Officer may serve a notice upon him requiring him to furnish, within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth along with such other particulars as may be provided for in the notice his total agricultural income during the previous year:

Provided that the Agricultural Income-tax Officer may in his discretion extend the date for the delivery of the return and shall in the case of agricultural income assessable under section 8 allow such extension of such date as may be necessary to enable the assessee to file any certified copy of an assessment order under the Indian Income-tax Act, 1922.

¹These words within square brackets were substituted for the words "total income" by section 5 of the West Bengal Agricultural Income-tax (Amendment) Act, 1949 (West Ben. Act III of 1949).

(Chapter V.—Machinery of assessment.—Section 25.)

(3) If any person has not furnished a return within the time allowed by or under sub-section (1) or sub-section (2), or having furnished a return under either of these sub-sections, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made.

(4) The Agricultural Income-tax Officer may serve on any person who has made a return under sub-section (1) or upon whom a notice has been served under sub-section (2) a notice requiring him, on a date to be therein specified, to produce or cause to be produced such accounts or documents as the Agricultural Income-tax Officer may require:

Provided that the Agricultural Income-tax Officer may on reasonable grounds and on application being made to him in this behalf allow such accounts or documents to be produced on a date later than that specified in the notice:

Provided further that the Agricultural Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

Assessment.

25. (1) If the Agricultural Income-tax Officer is satisfied without requiring the presence of the assessee or the production by him of any evidence that a return made under section 24 is correct and complete, he shall assess the total agricultural income of the assessee, and shall determine the sum payable by him on the basis of such return.

(2) If the Agricultural Income-tax Officer is not satisfied without requiring the presence of the person who made the return or the production of evidence that a return made under section 24 is correct and complete, he shall serve on such person, a notice requiring him, on a date to be therein specified, either to attend at the Agricultural Income-tax Officer's office or to produce, to cause to be there produced, any evidence on which such person may rely in support of the return.

(3) On the day specified in the notice issued under sub-section (2) or as soon afterwards as may be, the Agricultural Income-tax Officer, after hearing such evidence as such person may produce and such other evidence as the Agricultural Income-tax Officer may require on specified points, shall, by an order in writing, assess the total agricultural income of the assessee, and determine the sum payable by him on the basis of such assessment.

(4) The powers conferred by sub-sections (2) and (3) shall not except with the permission of the Commissioner be exercised by the Agricultural Income-tax Officer in the case of agricultural income which is assessed under the provisions of sub-section (2) of section 8 and regarding which an assessee has submitted together with his return under section 24 a certified copy of an assessment order under the Indian Income-tax Act, 1922.

1944.]

(Chapter V.—Machinery of assessment.—Sections 26, 27.)

XI of
1922.

(5) If any person fails to make the return required by any notice given under sub-section (2) of section 24 and has not made a return or a revised return under sub-section (3) of the same section or fails to comply with all the terms of a notice issued under sub-section (4) of the same section or, having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of this section, or fails to produce before the Agricultural Income-tax Officer any order under the Indian Income-tax Act, 1922, or a certified copy thereof, which may be necessary under the provisions of this Act for the purpose of enabling any assessment to be made under section 8, such officer shall make the assessment to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment.

26. (1) Where in any year under either head of agricultural income specified in section 5 it is computed that the sum on which agricultural income-tax is payable by the assessee is a negative quantity the assessee shall be deemed to have sustained a loss under that head to that extent and such loss shall be set off against the sum computed under the other head of agricultural income as that on which agricultural income-tax is payable in the same year.

Set off of
loss in
computing
taxable
agricul-
tural
income.

(2) Where the total sum computed under both heads of agricultural income as that on which agricultural income-tax is payable by an assessee in any year, being a previous year not earlier than the previous year for the assessment for the year ending on the 31st day of March, 1945, is a negative quantity, the assessee shall be deemed to have sustained a loss to that extent in that year, and such loss shall be carried forward to the following year and set off against the sum on which agricultural income-tax is computed to be payable in such year, and if such loss cannot be wholly set off in such year the amount of such loss not so set off shall be carried forward in the same manner to the next following year and so on, but no amount of such loss shall be carried forward for more than six successive years.

27. (1) Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge the agricultural income-tax assessed as payable by such person, or any agricultural income-tax which would have been payable by him under this Act if he had not died.

Tax of
deceased
person
payable
by repre-
sentative.

(2) Where a person dies before the publication of the notice referred to in sub-section (1) of section 24 or before he is served with a notice under sub-section (2) of section 24 or section 38 as the case may be, his executor, administrator or other legal representative shall, on the serving of the notice under sub-section (2) of section 24 or under section 38, as the case may be, comply therewith, and the Agricultural Income-

(Chapter V.—Machinery of assessment.—Sections 28, 29.)

tax Officer may proceed to assess the total agricultural income of the deceased person as if such executor, administrator or other legal representative were the assessee.

(3) Where a person dies without having furnished a return which he has been required to furnish under the provisions of section 24 or having furnished a return which the Agricultural Income-tax Officer has reason to believe to be incorrect or incomplete, the Agricultural Income-tax Officer may make an assessment of the total agricultural income of such person and determine the agricultural income-tax payable by him on the basis of such assessment, and for this purpose may by the issue of the appropriate notice which would have had to be served upon the deceased person had he survived, require from the executor, administrator or other legal representatives of the deceased person any accounts, documents or other evidence which he might under the provisions of sections 8, 24 and 25 have required from the deceased person.

Assessment
in case of
discon-
tinued
firm or
associa-
tion.

28. (1) Where agricultural income is received by a company firm or ¹[association of persons] and the business through which such agricultural income is received by such company, firm or association is discontinued in any year, an assessment may be made in that year on the basis of the agricultural income received during the period between the end of the previous year and the date of such discontinuance in addition to the assessment, if any, made on the basis of the agricultural income so received in the previous year.

(2) Any person discontinuing any such business shall give to the Agricultural Income-tax Officer notice of such discontinuance within thirty days thereof, and where any person fails to give the notice required by this sub-section, the Agricultural Income-tax Officer may direct that a sum shall be recovered from him by way of penalty not exceeding the amount of agricultural income-tax subsequently assessed on him in respect of any agricultural income of the company, firm or ¹[association of persons] up to the date of the discontinuance of its business.

Change in
constitu-
tion of a
firm or
ownership
of business.

29. (1) Where, at the time of making an assessment under section 25, it is found that a change has occurred in the constitution of a firm or that a firm has been newly constituted, the assessment shall be made on the firm as constituted, at the time of making the assessment.

(2) Where a person carrying on any business in course of which agricultural income is received has been succeeded in such capacity by another person, such person and such other person shall each be assessed in respect of his actual share of the agricultural income of the previous year:

Provided that, when the person succeeded cannot be found, the assessment of the agricultural income of the year

¹See foot note 1 on page 326, ante.

1944.]

(Chapter V.—Machinery of assessment.—Section 30.)

in which the succession took place up to the date of succession and for the year preceding that year shall be made on the person succeeding him in like manner and to the same amount as it would have been made on the person succeeded or when the tax in respect of the assessment made for either of such years assessed on the person succeeded cannot be recovered from him, it shall be payable by and recoverable from the person succeeding, and such person shall be entitled to recover from the person succeeded the amount of any tax so paid.

30. (1) Where, at the time of making an assessment under section 25, it is claimed by or on behalf of any member of a Hindu undivided family hitherto assessed as undivided that a partition has taken place among members or groups of members of such family, the Agricultural Income-tax Officer shall make due inquiry thereinto, and, if a certified copy of a decree of a competent Civil Court for partition of the joint family property or a document purporting to show that there is separate possession and enjoyment of such property is produced, and in the case of a document other than a certified copy of a decree the Agricultural Income-tax Officer is satisfied that such document has been acted upon by the parties thereof, or if the Agricultural Income-tax Officer is otherwise satisfied that the Hindu undivided family has ceased to exist as such and the agricultural income is being enjoyed separately by the members or groups of the members of such family in definite shares, he shall record an order to that effect:

Assessment after partition of a Hindu undivided family.

Provided that no such order shall be recorded until notices of the inquiry have been served on all the members of the family.

(2) Where such an order has been passed, the Agricultural Income-tax Officer shall make an assessment of the total agricultural income received by or on behalf of the joint family as such, as if no partition had taken place, and each member or group of members shall, in addition to any agricultural income-tax for which he or it may be separately liable and notwithstanding anything contained in clause (b) of section 10, be liable for a share of the agricultural income-tax on the agricultural income so assessed according to the portion of the joint family property allotted to him or it; and the Agricultural Income-tax Officer shall make assessment accordingly on the various members and groups of members in accordance with the provisions of section 25:

Provided that all the members and groups of members whose joint family property has been partitioned during previous year shall be liable jointly and severally for the agricultural income-tax assessed on the total agricultural income received by or on behalf of the joint family as such up to the date of partition.

(Chapter V.—Machinery of assessment.—Sections 31, 32.)

(3) Where such an order has not been passed in respect of a Hindu family hitherto assessed as undivided, such family shall be deemed for the purposes of this Act to continue to be a Hindu undivided family.

Cancellation of assessment where cause is shown.

31. Where an assessee within one month from the service of a notice of demand issued as hereinafter provided, satisfies the Agricultural Income-tax Officer that he was prevented by sufficient cause from making the return required by section 24 or that he did not receive the notice issued under sub-section (4) of section 24, or sub-section (2) of section 25, or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the terms of the last mentioned notices, the Agricultural Income-tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of section 25.

Penalty for concealment of income.

32. (1) If the Agricultural Income-tax Officer, the Assistant Commissioner, the Commissioner or the Appellate Tribunal in the course of any proceedings under this Act, is satisfied that any person—

- (a) has without reasonable cause failed to furnish the return of his total agricultural income which he was required to furnish by notice given under sub-section (1) or sub-section (2) of section 24 or section 38 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by such notice, or
- (b) has without reasonable cause failed to comply with a notice under sub-section (4) of section 24 or sub-section (2) of section 25, or
- (c) has concealed the particulars of his agricultural income or deliberately furnished inaccurate particulars of such income,

he may direct that such person shall pay by way of penalty, in the case referred to in clause (a), in addition to the amount of the agricultural income-tax payable by him a sum not exceeding that amount, and in the cases referred to in clauses (b) and (c), in addition to any agricultural income-tax payable by him, a sum not exceeding the amount of the agricultural income-tax which would have been avoided if the income as returned by such person had been accepted as the correct agricultural income:

Provided that—

- (a) no penalty for failure to furnish the return of his total agricultural income shall be imposed on an assessee whose total agricultural income is less than five thousand rupees unless he has been served with a notice under sub-section (2) of section 24;

of 1944.]

(Chapter V.—Machinery of assessment.—Sections 33, 34.)

(b) where a person has failed to comply with a notice under sub-section (2) of section 24 or section 38 and proves that he has no income liable to agricultural income-tax, the penalty imposable under this sub-section shall be a penalty not exceeding twenty-five rupees.

(2) No order shall be made against a person under sub-section (1) unless such person has been heard or has been given a reasonable opportunity of being heard.

(3) No prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

(4) When the Appellate Tribunal, the Commissioner or the Assistant Commissioner makes an order under sub-section (1) he shall forthwith send a copy of the same to the Agricultural Income-tax Officer concerned.

33. When any agricultural income-tax or penalty is due in consequence of any order passed under or in pursuance of this Act, the Agricultural Income-tax Officer shall serve upon the assessee or other person liable to pay such tax or penalty a notice of demand in the prescribed form specifying the sum so payable.

Notice of demand.

34. (1) Any assessee objecting to the amount of agricultural income assessed under section 25 or section 31 or the amount of loss computed under section 26 or the amount of agricultural income-tax determined under section 25 or section 31 or denying his liability to be assessed under this Act or objecting to a refusal of an Agricultural Income-tax Officer to make a fresh assessment under section 31 or objecting to any order under section 30 or section 32 made by an Agricultural Income-tax Officer or objecting to any order imposing any penalty by an Agricultural Income-tax Officer under sub-section (1) of section 45 or objecting to a refusal of an Agricultural Income-tax Officer to allow a claim to a refund under section 47, 48 or 51 or the amount of the refund allowed by the Agricultural Income-tax Officer under any of those sections, may appeal to the Assistant Commissioner against the assessment or against such refusal or order:

Appeal against assessment under this Act.

Provided that no appeal shall lie against an order under sub-section (1) of section 45 unless the agricultural income-tax has been paid.

(2) The appeal shall ordinarily be presented within thirty days of receipt of the notice of demand relating to the assessment or penalty objected to or of the intimation of the refusal to pass an order under sub-section (1) of section 30 or of the date of the refusal to make a fresh assessment under section 31 or of the intimation of an order under section 47, 48 or 51, as the case may be; but the Assistant Commissioner may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(Chapter V.—Machinery of assessment.—Section 35.)

(3) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

Hearing of
appeal.

35. (1) The Assistant Commissioner shall fix a day and place for the hearing of the appeal and may from time to time adjourn the hearing:

Provided that if the assessee or his agent is not present before the Assistant Commissioner when such day and place are fixed or such adjournment is made, the Assistant Commissioner shall inform the assessee or his agent by notice sent by post of the day and place fixed or of any date to which the hearing of such appeal is adjourned as the case may be.

(2) The Assistant Commissioner may, before disposing of any appeal, make such further inquiry as he thinks fit, or cause further inquiry to be made by the Agricultural Income-tax Officer.

(3) The Assistant Commissioner may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if the Assistant Commissioner is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

(4) In disposing of an appeal, the Assistant Commissioner may—

(a) in the case of an order of assessment—

(i) confirm, reduce, enhance or annul the assessment;
or

(ii) set aside the assessment and direct the Agricultural Income-tax Officer to make a fresh assessment after making such further inquiry as the Agricultural Income-tax Officer thinks fit or the Assistant Commissioner may direct, and the Agricultural Income-tax Officer shall thereupon proceed to make such fresh assessment and determine where necessary the amount of agricultural income-tax payable on the basis of such fresh assessment; or

(b) in the case of an order under section 47, section 48 or section 51 confirm, cancel or vary such order;
or

(c) in the case of an order under sub-section (1) of section 30, confirm such order or cancel it and either direct the Agricultural Income-tax Officer to make further inquiry and pass a fresh order¹[or] to make an assessment in the manner laid down in sub-section (2) of section 30; or

¹This word "or" within square brackets was inserted by section 2 of, and the First Schedule to, the West Bengal Repealing and Amending Act, 1949 (West Ben. Act XIX of 1949).

of 1944.]

(Chapter V.—Machinery of assessment.—Section 36.)

- (d) in the case of an order under section 32 or sub-section (1) of section 45, confirm or cancel such order or vary it so as either to enhance or reduce the penalty; or
- (e) in the case of an appeal against a computation of loss under section 26, confirm or vary such computation:

Provided that the Assistant Commissioner shall not enhance an assessment or a penalty or reduce a refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or such reduction.

(5) The Assistant Commissioner shall on the conclusion of the appeal communicate the orders passed by him to the assessee and to the Commissioner.

36. (1) Any assessee objecting to an order passed by the Assistant Commissioner under section 32 or section 35 may appeal to the Appellate Tribunal within sixty days of the date on which such order is communicated to him.

Procedure
of appeal
to the
Appellate
Tribunal.

(2) The Commissioner may, if he objects to an order passed by the Assistant Commissioner under section 35, direct the Agricultural Income-tax Officer to appeal to the Appellate Tribunal against such order and in such case the Agricultural Income-tax Officer shall make the appeal within sixty days from the date on which the order is communicated to the Commissioner by the Assistant Commissioner.

(3) The Appellate Tribunal may admit an appeal after the expiry of the sixty days referred to in sub-sections (1) and (2) if ¹[it] is satisfied that there was sufficient cause for not presenting it within that period.

(4) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner, and shall, except in the case of an appeal referred to in sub-section (2), be accompanied by a fee of twenty-five rupees.

(5) The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders as it thinks fit, and shall communicate such orders to the assessee and to the Commissioner.

(6) Save as provided in section 63^{*} the orders passed by the Appellate Tribunal on appeal shall be final.

(7) Where an appeal is made to the Appellate Tribunal under this section the costs shall be in the discretion of the said Tribunal.

¹This word "it" within square brackets was substituted for the word "he" by section 2 of, and the First Schedule to, the West Bengal Repealing and Amending Act, 1949 (West Ben. Act XIX of 1949).

(Chapter V.—Machinery of assessment.—Section 37.)

Power of
revision
by Com-
missioner.

37. (1) The Commissioner may of his own motion call for the record of any proceeding under this Act in which an order has been passed by any authority subordinate to him and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit:

Provided that the Commissioner shall not revise any order under this sub-section if—

- (a) where an appeal against the order lies to the Assistant Commissioner or to the Appellate Tribunal, the time within which such appeal may be made has not expired; or
- (b) the order is pending on an appeal before the Assistant Commissioner or has been made the subject of an appeal to the Appellate Tribunal; or
- (c) the order has been made more than one year previously.

(2) The Commissioner may, on application by an assessee for revision of an order under this Act passed by any authority subordinate to the Commissioner, made within one year from the date of the order, call for the record of the proceeding in which such order was passed, and on receipt of the record may make such inquiry or cause such inquiry to be made, and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit:

Provided that the Commissioner shall not revise any order under this sub-section if—

- (a) where an appeal against the order lies to the Assistant Commissioner or to the Appellate Tribunal but has not been made, the time within which such appeal may be made has not expired, or, in the case of an appeal to the Appellate Tribunal, the assessee has not waived his right of appeal; or
- (b) where an appeal against the order has been made to the Assistant Commissioner, the appeal is pending before the Assistant Commissioner; or
- (c) the order has been made the subject of an appeal to the Appellate Tribunal:

Provided further that an order by the Commissioner declining to interfere shall be deemed not to be an order prejudicial to the assessee.

- (3) Every application by an assessee under sub-section (2) shall be accompanied by a fee of twenty-five rupees.

of 1944.]

(Chapter V.—Machinery of assessment.—Sections 38, 39,)

XI of 1922.

38. (1) If in consequence of definite information which has come into his possession the Agricultural Income-tax Officer discovers that agricultural income chargeable to agricultural income-tax has escaped assessment in any year, or has been under-assessed, or has been assessed at too low a rate, or has been the subject of excessive relief under this Act, the Agricultural Income-tax Officer may, '[in any case in which the income is partially agricultural income assessable under this Act and partially income chargeable under the Indian Income-tax Act, 1922, under the head 'Business' or in which he has reason to believe that the assessee has concealed the particulars of his agricultural income or deliberately furnished inaccurate particulars thereof, at any time within six years, and in any other case at any time within four years] of the end of that year, serve on the person liable to pay agricultural income-tax on such agricultural income, or in the case of a company or the Ruler of ²[a Part B State], on the principal officer of such company or State, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 24 and may proceed to assess or re-assess such agricultural income and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section:

Income
escaping
assessment

Provided that the agricultural income-tax shall be charged at the rate at which it would have been charged had the agricultural income not escaped assessment or full assessment, as the case may be.

³[(2) No order of assessment under section 25 or of assessment or re-assessment under sub-section (1) shall be made after the expiry, in any case in which section 8 or clause (c) of sub-section (1) of section 32 applies, of six years and, in other case, of four years from the end of the year in which the agricultural income was first assessable:

Provided that nothing contained in this sub-section shall apply to a re-assessment made in pursuance of an order under section 35, section 36, section 63 or section 64.]

• **39.** (1) The Commissioner may at any time within four years from the date of any order passed by him in revision under section 37, the Appellate Tribunal or the Assistant Commissioner may, at any time within four years from the date of any order passed by it or him on appeal and the Agricultural Income-tax Officer may, at any time within four years from the date of any assessment order or refund

Rectifica-
tion of
mistake.

¹These words and figures within square brackets were substituted for the words "at any time within four years" by section 6 (a) of the West Bengal Agricultural Income-tax (Amendment) Act, 1949 (West Ben. Act III of 1949).

²See foot-note 4 on page 322, *ante*.

³Sub-section (2) of section 38 was substituted for the original sub-section (2) by section 6(b) of the West Bengal Agricultural Income-tax (Amendment) Act, 1949 (West Ben. Act III of 1949).

(Chapter V.—Machinery of assessment.—Section 40.)

order passed by him, on his own motion rectify any mistake apparent from the record of the revision, appeal, assessment or refund, as the case may be, and shall within the like period rectify any such mistake which has been brought to his notice by an assessee:

Provided that no such rectification shall be made, having the effect of enhancing an assessment or reducing a refund unless the Commissioner, the Appellate Tribunal, the Assistant Commissioner or the Agricultural Income-tax Officer, as the case may be, has given notice to the assessee of his intention so to do and has allowed the assessee a reasonable opportunity of being heard.

(2) Where any such rectification has the effect of reducing the assessment, the Agricultural Income-tax Officer shall make any refund which may be due to such assessee.

(3) Where any such rectification has the effect of enhancing the assessment or reducing a refund the Agricultural Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 33 and the provisions of this Act shall apply accordingly.

(4) Any assessee objecting to any such rectification which has the effect of enhancing the assessment or reducing a refund may, within thirty days of receipt of the notice of demand referred to in sub-section (3), appeal—

(a) in the case where the rectification is made by an Agricultural Income-tax Officer, to the Assistant Commissioner and the provisions of sub-section (3) of section 34 and section 35 shall apply to every such appeal as if it were an appeal against an order of assessment under section 25 or an order of refund under section 47 or section 48;

(b) in the case where the rectification is made by the Assistant Commissioner to the Appellate Tribunal and the provisions of sub-sections (4), (5), (6) and (7) of section 36 shall apply to every such appeal as if it were an appeal against an order passed by the Assistant Commissioner under section 35:

Provided that the provisions of section 63 shall not apply to any order passed by the Appellate Tribunal on any such appeal.

Omit section 40.

(Omitted by West Ben. Act XXVIII of 1957, section 5.)

[No. 2, dated the 1st August, 1958.]

agricultural
t, fraction of
and fraction
be regarded

of 1944.]

(Chapter V.—Machinery of assessment.—Chapter VI.—
Recovery of tax and penalties.—Sections 41—44.)

Act V of
1908.

41. The Agricultural Income-tax Officer, the Assistant Commissioner and the Appellate Tribunal shall, for the purposes of this Chapter, and the Commissioner shall, for the purposes of section 37, have the same '[powers]' as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely:—

Power to
take
evidence
on oath,
etc.

- (a) enforcing the attendance of any person and examining him on oath or affirmation;
- (b) compelling the production of documents; and
- (c) issuing commissions for the examination of witnesses;

Act XLV
of 1860.

and any proceeding before an Agricultural Income-tax Officer, Assistant Commissioner or the Appellate Tribunal under this Chapter or before the Commissioner under section 37, shall be deemed to be a "Judicial proceeding" within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code.

42. The Agricultural Income-tax Officer or Assistant Commissioner may, for the purposes of this Act,—

Power to
call for
informa-
tion.

- (1) require any firm or Hindu undivided family to furnish him with a return of the members of the firm, or of the manager or adult male members of the family, as the case may be, and of their addresses;
- (2) require any person whom he has reason to believe to be a trustee, guardian, common manager, or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian, common manager, or agent, and of their addresses.

43. The Agricultural Income-tax Officer or any person authorized by him in writing in this behalf may inspect and, if necessary, take copies or cause copies to be taken, of any register of the members, debenture-holders or mortgagees of any company or of any entry in such register.

Power to
inspect the
register of
members
of any
company.

CHAPTER VI.

Recovery of tax and penalties.

44. (1) Any amount specified as payable in a notice of demand under section 33 or an order under section 35, section 36 or section 37, shall be paid within the time, at the place and to the person mentioned in the notice or order, or if a

Tax when
payable.

¹This word "powers" within square brackets was substituted for the word "power" by section 2 of, and the First Schedule to, the West Bengal Repealing and Amending Act, 1949 (West Ben. Act XIX of 1949).

(Chapter VI.—Recovery of tax and penalties.—Section 45.)

time is not so mentioned, then on or before the first day of the second month following the date of the service of the notice or order, and any assessee failing so to pay shall be deemed to be in default:

Provided that where an assessee has presented an appeal under section 34, or under clause (a) of sub-section (4) of section 39, if such assessee makes an application to the Agricultural Income-tax Officer, supported by a certified copy of an order by the Assistant Commissioner or a certified copy of any entry in any register maintained by the Assistant Commissioner showing that such appeal has been presented¹[,] for an extension of the period allowed for payment of the said tax until the appeal is disposed of, the Agricultural Income-tax Officer shall, unless the Assistant Commissioner for reasons to be recorded in writing directs otherwise, extend such period until the disposal of the said appeal.

(2) If an assessee makes an application within the time mentioned in the notice of²[demand under] section 33 for being allowed to pay the tax due by instalments, the Agricultural Income-tax Officer may in his discretion, by order in writing allow the assessee to pay the tax due in instalments not exceeding four in number at such intervals as the said officer may fix in his discretion:

Provided that if as a result of an application made by the assessee, the Agricultural Income-tax Officer allows the assessee to pay the tax due in instalments, the assessee shall be deemed to have waived all his rights of appeal under this Act:

Provided further that if, on being allowed to pay the tax due by instalments, the assessee defaults in the payment of any one instalment he shall be deemed to be a defaulter in respect of the total remaining amount of tax due.

Mode and
time of
recovery.

45. (1) When an assessee is in default in making a payment of agricultural income-tax, the Agricultural Income-tax Officer may in his discretion direct that, in addition to the amount of the arrears, a sum not exceeding half that amount shall be recovered from the assessee by way of penalty.

(2) For the purposes of sub-section (1), the Agricultural Income-tax Officer may direct the recovery of any sum less than half the amount of the arrears and may enhance the sum so directed to be recovered from time to time in the case of a continuing default, so however that the total sum so directed to be recovered shall not exceed half the amount of the arrears payable.

¹This comma within square brackets was inserted after the word "presented" by section 2 of, and the First Schedule to, the West Bengal Repealing and Amending Act, 1949 (West Ben. Act XIX of 1949).

²These words within square brackets were substituted for the words 'demand in', *ibid.*

of 1944.]

(Chapter VI.—Recovery of tax and penalties.—Chapter VII.—Refunds—Sections 46, 47.)

(3) The Agricultural Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue:

~~Provided that—~~

*In sub-section (4) of section 45, add the following proviso, ^{ers of} ^{ie of} ^{owers}
namely:—

“Provided that in computing the said period of three years the time during which the recovery of arrears of agricultural income-tax has been stayed, either wholly or in part, by an injunction or any other order of a competent court shall be excluded.”. ^{nable} ^{on of}

(Added by West Ben. Act XXVIII of 1957, section 6.)

[No. 2, dated the 1st August, 1958.] ^{about the}
~~one date on which the last instalment fixed under sub-~~ ^{in default, or}

section (2) of section 44 falls due, or

(c) the date on which any appeal relating to the payment of tax has been disposed of,

whichever is the later.

46. Any sum imposed by way of penalty under this Act shall be recoverable in the manner provided in this chapter for the recovery of arrear of agricultural income-tax. ^{Recovery} ^{of penal-} ^{ties.}

CHAPTER VII.

Refunds.

47. (1) If any individual, Hindu undivided family, company, Ruler of ²[a Part B State], firm or other association of persons satisfies the Agricultural Income-tax Officer that the amount of agricultural income-tax paid by him or by it or on his or its behalf or treated as paid on his or its behalf for any year exceeds the amount with which he or it is properly chargeable under this Act for that year, he or it shall be entitled to a refund of any such excess. ^{Refunds.}

(2) The Assistant Commissioner in the exercise of his appellate powers or the Commissioner in the exercise of his powers of revision if satisfied to the like effect shall cause a refund to be made by the Agricultural Income-tax Officer of any amount found to have been wrongly paid or paid in excess.

¹The words, “in respect of the attachment and sale of debts due to the assessee” and the words “in respect of the attachment and sale of debts due to a judgment-debtor” in the proviso to sub-section (3) of section 45 were omitted by section 7 of the West Bengal Agricultural Income-tax (Amendment) Act, 1949 (West Ben. Act III of 1949).

See foot-note 4 on page 322, ante.

(Chapter VII.—Refunds.—Section 48.)

(3) Where agricultural income of one person is included under any provision of this Act in the total agricultural income of any other person such other person only shall be entitled to a refund under this section in respect of such agricultural income.

(4) Nothing in this section shall operate to validate any objection or appeal which is otherwise invalid or to authorise the revision of any assessment or other matter which has become final and conclusive, or the review by any officer of a decision of his own which is subject to appeal or revision or where any relief is specifically provided elsewhere in this Act, to entitle any person to any relief other or greater than

For sub-sections (1), (2) and (3) of section 48, substitute the following sub-sections, namely:—

withstanding anything contained in section 47, a partner of a firm or a member of an association of persons on whose behalf agricultural income-tax is, by section 17, deemed to have been paid by such firm or association, shall be entitled to a refund of agricultural income-tax on account of any difference between the rate of agricultural income-tax applicable under this Act to the total agricultural income of such firm or association and the average rate which would be applicable to the total world income of such partner or member if such total world income were agricultural income chargeable to agricultural income-tax under this Act.

- (2) Any partner of a firm or member of an association of persons who is deemed to be entitled under the provisions of sub-section (1) to a refund of agricultural income-tax in respect of the previous year may apply to the Agricultural Income-tax Officer in the prescribed manner for such refund, and if the Agricultural Income-tax Officer after such inquiry as he thinks necessary is satisfied that a refund under the provisions of sub-section (1) is due he shall compute the amount of such refund according to the provisions of sub-section (3) and such amount shall be paid to the partner or member, as the case may be.

- (3) The amount of any refund of agricultural income-tax due under the provisions of sub-section (1) shall be the product of the amount of agricultural income on which tax is deemed to have been paid by a firm or association of persons and has been received by a partner or member, as the case may be, and the difference between the rate of agricultural income-tax applicable to the total agricultural income of the said firm or association chargeable to agricultural income-tax under this Act, and the average rate of such tax applicable to an amount equivalent to the total world income of such partner or member in the previous year.”

7, a share-
member of an
agricultural
en paid by
titled to a
y difference
table under
a company,
would be
share-holder,
re agricul-
tax under

if a firm or
deemed to be
a refund of
is year may
in the pres-
agricultural
is necessary
sub-section
und accord-
ch amount
ber, as the

income-tax
be the pro-
which tax is
or [associa-
share-holder,
e difference
eable to the
rm or asso-
or this Act,
n amount
share-holder,

of 1944.]

(Chapter VII.—Refunds.—Section 49.)

(4) "Average rate" in sub-section (3) means the rate obtained by dividing the amount of agricultural income-tax which would be payable ¹[by an assessee] in the year of assessment if his total world income in the previous year were agricultural income chargeable to agricultural income-tax at the rates applicable under this Act by the said total world income.

(5) For the purpose of determining the total world income,—

(a) where the total world income of an assessee under the Indian Income-tax Act, 1922, has been computed for the purposes of that Act, that computation shall be accepted as determining the total world income under that Act for the purposes of this Act and if such a computation has not been made the total world income of an assessee under that Act shall be computed in the manner prescribed;

(b) the agricultural income derived from land outside ²[West Bengal] shall be calculated in the manner prescribed.

Explanation.—A certified copy of an order computing the total world income under the Indian Income-tax Act, 1922, shall be conclusive evidence of the contents thereof.

49. (1) The ³[State] Government may, by notification in the *Official Gazette*, make provision for the granting of relief in respect of agricultural income on which both agricultural income-tax under this Act and other income-tax have been paid.

Reciprocal relief in respect of double taxation with other Government.

(2) For the purposes of this section "other income-tax" means any income-tax, super-tax or sur-tax charged under—

(a) any law of a ³[State] other than ²[West Bengal] in force in that ³[State] or

(b) any law in force in any ⁴[Part B State] or in any part of His Majesty's Dominions, or in the United Kingdom.

where the laws of such ³[State], State⁵ or part of His Majesty's Dominions, or of the United Kingdom, as the case may be, provide for relief in respect of tax charged on income both in such ³[State], State or part of His Majesty's Dominions, or in the United Kingdom, as the case may be, and in ²[West Bengal], which appears to the ³[State] Government to correspond to the relief which may be granted under this section.

¹These words within square brackets were substituted for the words "by assessee" by section 2 of, and the First Schedule to, the West Bengal Repealing and Amending Act, 1949 (West Ben. Act XIX of 1949).

²See foot-note 2 on page 321, *ante*.

³See foot-note 3 on page 323, *ante*.

⁴See foot-note 3 on page 324, *ante*.

⁵*Sic*. This word "State" has been left unadapted and should be read as "Part B State".

(Chapter VII.—Refunds.—Chapter VII.—Offences and penalties.—Sections 50—54.)

Power to set off amount of refunds against tax remaining payable.

50. Where under any of the provisions of this Act, a refund is found to be due to any person, the Agricultural Income-tax Officer, the Assistant Commissioner or the Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded, or any part of that amount against the agricultural income-tax, if any, remaining payable by the person to whom the refund is due.

Power of representative of deceased person or persons disabled to make claim on his behalf.

51. Where through death, incapacity, bankruptcy, liquidation or other cause, a person who would but for such cause have been entitled to a refund under any of the provisions of this Act, or to make a claim under section 47 or section 48 is unable to receive such refund or to make such claim, his executor, administrator or other legal representative, or the trustee or receiver, as the case may be, shall be entitled to receive such refund or to make such claim for the benefit of such person or his estate.

Limitation of claims for refunds.

52. No claim to any refund of agricultural income-tax under this chapter shall be allowed unless it is made within four years from the last day of the financial year commencing next after the expiry of the previous year in which the agricultural income was received.

CHAPTER VIII.

Offences and penalties.

Failure to make payments or deliver returns or statements or allow inspections.

53. (1) If a person fails without reasonable cause or excuse—

(a) to furnish in due time any of the returns mentioned in section 24 or section 42;

(b) to produce or cause to be produced, on or before the last date allowed by the Agricultural Income-tax Officer under the first proviso to sub-section (4) of section 24 or the date mentioned in the notice under the said sub-section, whichever is the later, such accounts, or documents as are referred to in the notice;

(c) to grant inspection or allow copies to be taken in accordance with the provisions of section 43

he shall, on conviction of such offence before a Magistrate, be punishable with a fine which may extend to fifty rupees.

(2) If a person after having been convicted of any offence referred to in sub-section (1) continues to commit such offence, he shall be punished for each day after the first during which he continues so to offend with fine which may extend to five rupees.

False statement in declaration.

54. If a person makes a statement in a verification mentioned in section 24 or sub-section (3) of section 34 or sub-section (4) of section 36 which is false, and which he either knows or believes to be false, or does not believe to be true,

of 1944.]

(Chapter VIII.—*Offences and penalties.*—Sections 55, 56.)

he shall be punishable, on conviction before a Magistrate, with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees or with both.

55. (1) A person shall not be proceeded against for an offence under section 53 or section 54 except at the instance of the Commissioner.

Prosecution to lie at the instance of Commissioner.

(2) The Commissioner may, subject to such conditions as may be prescribed, either before or after the institution of proceedings compound any such offence.

56. (1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of any assessment¹ **proceedings or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as provided in sub-section (3) be entitled to require any servant of the ²[Government] to produce before it any such return, accounts, documents or record or any part of such record, or to give evidence before it in respect thereof.

Disclosure of information by public servant.

I of 1872.

(2) If, save as provided in sub-section (3), any servant of the ²[Government] discloses any of the particulars referred to in sub-section (1), he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine.

(3) Nothing in this section shall apply to—

(a) the disclosure of any of the particulars referred to in sub-section (1) for the purposes of a prosecution under the Indian Penal Code in respect of any such statement, returns, accounts, documents, affidavit, deposition, record or evidence or for the purposes of carrying into effect the provisions of this Act;

(b) the disclosure to an officer of the Central Government of such facts as may be necessary for the purpose of enabling that Government to levy or realise any tax imposed by it on income other than agricultural income;

Act XLV .
of 1860.

¹The comma after the word "assessment" in sub-section (1) of section 56 was omitted by section 2 of, and the First Schedule to, the West Bengal Repealing and Amending Act, 1949 (West Ben. Act XIX of 1949).

²See foot-note 4 on page 321, *ante*.

(Chapter IX.—Miscellaneous.—Sections 57, 58.)

- (c) the production by a servant of the ¹[Government] before a Court of any document, declaration or affidavit filed or the record of any statement or deposition made in a proceeding under section 30 or to the giving of evidence by a servant of the ¹[Government] in respect thereof.

(4) No prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

CHAPTER IX.

Miscellaneous.

Power to
make
rules.

57. (1) The ²[State] Government may, subject to the condition of previous publication, make ³rules consistent with the provisions of this Act for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe in accordance with the provisions of this Act the manner of ascertainment and determination of agricultural income;
- (b) prescribe the procedure to be followed on application for refunds allowable under this Act;
- (c) provide for any matter which by this Act is to be prescribed.

Appear-
ance by
authorised
represent-
ative.

58. (1) An assessee, who is entitled or required to attend before the Appellate Tribunal or any agricultural income-tax authority in connection with any proceeding under this Act otherwise than when required under section 41 to attend personally for examination on oath or affirmation, may attend by a person authorised by him in writing in this behalf, being a relative of or a person regularly employed by the assessee, or a lawyer or accountant or agricultural income-tax practitioner, and not being disqualified by or under subsection (3).

(2) In this section—

- (i) a person regularly employed by the assessee shall include any officer of a banking company with which the assessee maintains a current account or has other regular dealings.

¹See foot-note 4 on page 321, *ante*.

²See foot-note 3 on page 323, *ante*.

³For the Bengal Agricultural Income-tax Rules, 1944, see notification No. 46FT., dated the 27th January, 1945, published in the *Calcutta Gazette* of 1945, Part I, page 181.

of 1944.]

(Chapter IX.—Miscellaneous.—Section 58.)

VII of
1913.

Explanation.—“Banking company” means a banking company as defined in section 277F of the ²Indian Companies Act, 1913;

(ii) “lawyer” means a Barrister-at-law or Solicitor or any other person entitled to plead in any Court of law in ³[the whole of India except Part B States];

(iii) “accountant” means a registered accountant enrolled in the Register of Accountants, maintained by the Central Government under the Auditor’s Certificate Rules, 1932, or holder of a restricted certificate under the Restricted Certificate Rules, 1932, or a member of an Association of Accountants recognised by the Central Board of Revenue;

⁴[(iv) “agricultural income-tax practitioner” means any person who has acquired such educational qualifications as may be prescribed and who has, subject to the payment of such fees as may be prescribed, been registered in the manner prescribed as such a practitioner.]

(3) If any lawyer or registered accountant is found guilty of misconduct in connection with any agricultural income-tax proceedings by the authority empowered to take disciplinary action against members of the profession to which he belongs, or if any other person is found guilty of such misconduct by the Commissioner, the Commissioner may direct that he shall be thenceforward disqualified to represent an assessee under sub-section (1):

Provided that—

(a) no such direction shall be made in respect of any person unless he is given a reasonable opportunity of being heard;

(b) any person against whom such direction is made may, within one month of the making of the direction, appeal to the High Court; and

¹Section 277F and the following sections 277G to 277N under the heading “Banking Companies” in Part XA of the Indian Companies Act, 1913 (VII of 1913) were repealed and re-enacted by the Banking Companies Act, 1949 (X of 1949) and references to any provisions of the former Act under the said Part XA should be construed as references to the corresponding provisions of the latter Act.

²The Indian Companies Act, 1913 was repealed and re-enacted by the Companies Act, 1956 (I of 1956).

³The words “all the Provinces of India” were originally substituted for the words “British India” by the India (Adaptation of Existing Indian Laws) Order, 1947, and thereafter these words within square brackets were substituted for the words “all the Provinces of India” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴Clause (iv) was substituted for the original clause by s. 8. of the West Bengal Agricultural Income-tax (Amendment) Act, 1949 (West Ben. Act III of 1949).

(*Chapter IX.—Miscellaneous.—Sections 59—61.*)

(c) no such direction shall take effect until one month from the making thereof or, when an appeal is preferred until the disposal of the appeal.

Receipts
to be
given.

59. A receipt shall be given for any money paid or recovered under this Act.

Service of
notices.

60. (1) A notice or requisition under this Act may be served on the person therein named either by post, or as if it were a summons issued by a Court, under the Code of Civil Procedure, 1908.

Act V of
1908.

(2) Any such notice or requisition may—

(a) in the case of a firm, or a Hindu undivided family, be addressed to any member of the firm or to the manager of the family; and

(b) in the case of the Ruler of ¹[a Part B State], a company or any other ²[association of persons] be addressed to the principal officer thereof.

Place of
assess-
ment.

61. (1) Where an assessee is a company having a registered office in ³[West Bengal], it shall be assessed by the Agricultural Income-tax Officer of the area in which such registered office is situated.

(2) Where an assessee is a company not having a registered office in ³[West Bengal] or is a firm or other ²[association of persons], it shall be assessed by the Agricultural Income-tax Officer of the area where the principal accounts relating to its agricultural income are kept.

(3) In all other cases the assessee shall be assessed by the Agricultural Income-tax Officer of the area in which such assessee resides and where the assessee resides outside ³[West Bengal] by the Agricultural Income-tax Officer of the area in which the agent or the principal officer of such assessee resides :

Provided that if the accounts relating to the agricultural income of an assessee are kept in any place in ³[West Bengal], such assessee shall have the option of being assessed by the Agricultural Income-tax Officer of the area in which such place is situated.

Explanation.—In the case of a Hindu undivided family, an assessee shall for the purpose of this sub-section be deemed to reside where the manager of the family resides.

(4) Where an option is exercisable by an assessee under the proviso to sub-section (3), he shall exercise such option within thirty days of the publication of the notice under sub-section (1) of section 24 or where a notice under sub-section (2) of that section is served, within thirty days from the service of such notice.

¹See foot-note 4 on page 322, *ante*.

²See foot-note 1 on page 326, *ante*.

³See foot-note 2 on page 321, *ante*.

of 1944.]

(Chapter IX.—Miscellaneous.—Sections 62, 63.)

(5) Where any question arises under this section as to the place of assessment, such question shall be determined by the Assistant Commissioner after giving the assessee an opportunity of being heard.

(6) Where an assessment has once been made under this Act by an Agricultural Income-tax Officer, no objection relating to the place of assessment shall lie against such assessment.

(7) Subject to the provisions of this section every Agricultural Income-tax Officer shall have all the powers conferred by or under this Act on the Agricultural Income-tax Officer in respect of any agricultural income derived from land situated within the area to which he is appointed.

62. Every person retaining or paying any tax in pursuance of this Act in respect of agricultural income belonging to another person is hereby indemnified for the retention or payment thereof. Indemnity.

63. (1) Within sixty days of the date upon which he is served with a notice of an order under sub-section (5) of section 36 the assessee or the Commissioner may by application in the prescribed form, accompanied when the application is made by the assessee, by a fee of fifty rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and the Appellate Tribunal shall within ninety days of the receipt of such application, draw up a statement of the case and refer it to the High Court: Statement of case by Appellate Tribunal to High Court.

Provided that, if in the exercise of its powers under sub-section (2) the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives notice of the refusal to state the case, withdraw his application, and if he does so, the fee paid shall be refunded.

(2) If on any application being made under sub-section (1) the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within ninety days, from the date on which he is served with notice of the refusal, apply to the High Court, and the High Court may, if it is not satisfied of the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it and on receipt of any such requisition the Appellate Tribunal shall state the case and refer it accordingly.

(3) If on any application being made under sub-section (1) the Appellate Tribunal rejects it on the ground that it is time-barred, the assessee or the Commissioner, as the case may be, may, within sixty days from the date on which he is served with notice of the rejection apply to the High Court, and the High Court, if it is not satisfied of the correctness

(Chapter IX.—Miscellaneous.—Section 64.)

of the Appellate Tribunal's decision, may require the Appellate Tribunal to treat the application as made within the time allowed under sub-section (1).

(4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Appellate Tribunal to make such additions thereto or alterations therein as the Court may direct in that behalf.

(5) The High Court upon the hearing of any such case shall decide the questions of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send a copy of such judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(6) Where a reference is made to the High Court the costs shall be in the discretion of the Court.

(7) Notwithstanding that a reference has been made under this section to the High Court, tax shall be payable in accordance with the assessment made in the case:

Provided that if the amount of assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow unless the High Court on intimation given by the Commissioner within thirty days of the receipt of the result of such reference that the Commissioner intends to ask for leave to appeal to ¹[the Supreme Court], makes an order authorising the Commissioner to postpone payment of such refund until the disposal of the appeal to ¹[the Supreme Court].

(8) Section 5 of the Indian Limitation Act, 1908, shall apply to an application to the Appellate Tribunal under sub-section (1) or to the High Court under sub-section (2) or sub-section (3). IX of 1908.

Reference to be heard by a Bench of the High Court, and appeal to lie in certain cases to the Supreme Court.

64. (1) When any case has been referred to the High Court under section 63, it shall be heard by a Bench of not less than two judges of the High Court, and in respect of such case the provisions of section 98 of the Code of Civil Procedure, 1908, shall so far as may be, apply notwithstanding anything contained in the Letters Patent of the High Court or in any other law for the time being in force.

(2) An appeal shall lie to ¹[the Supreme Court] from any judgment of the High Court delivered on a reference made under section 63 in any case which the High Court certifies to be a fit one for appeal to ¹[the Supreme Court]. Act V of 1908.

¹These words within square brackets were substituted for the words "His Majesty in Council" by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

of 1944.]

(Chapter IX.—Miscellaneous.—Sections 65, 66.)

(3) The provisions of the Code of Civil Procedure, 1908, relating to appeals to ¹[the Supreme Court] shall, so far as may be, apply in the case of appeals under this section in like manner as they apply in the case of appeals from decrees of a High Court:

Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (5) or sub-section (7) of section 63:

Provided further that the High Court may, on petition made for the execution of the order of ¹[the Supreme Court] in respect of any costs awarded thereby, transmit the order for execution to any Court subordinate to the High Court.

(4) Where the judgment of the High Court is varied or reversed in appeal under this section, effect shall be given to the order of ¹[the Supreme Court] in the manner provided in sub-sections (5) and (7) of section 63 in the case of a judgment of the High Court.

(5) Nothing in this section shall be deemed—

(a) to bar the full and unqualified exercise of ²His Majesty's pleasure in receiving or rejecting appeals to ¹[the Supreme Court], or otherwise howsoever, or

(b) to interfere with any rules made by the ³[Supreme Court], and for the time being in force, for the presentation of appeals to ¹[the Supreme Court], or their conduct before the said ⁴Judicial Committee.

65. No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any officer of the ⁵[Government] for anything in good faith done or intended to be done under this Act.

Bar of suits in Civil Courts.

66. In computing the period of limitation prescribed for an appeal under this Act or for an application under section 63 the day on which the order complained of was made, and the time requisite for obtaining a copy of such order, shall be excluded.

Computation of periods of limitation.

¹See foot-note 1 on page 362, *ante*.

²*Sic.* The expression "His Majesty's pleasure" has not been adapted yet.

³These words within square brackets were substituted for the words "Judicial Committee of the Privy Council" by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

⁴*Sic.* The expression "Judicial Committee" has been left unadapted and should be read as "that Court".

⁵See foot-note 4 on page 321, *ante*.

(The Schedule.)

THE SCHEDULE.

Pages 364-365—

In the Schedule,—(1) *in paragraph A,—*

(a) *in sub-paragraph (1), for the existing entries under the heading "Rate" against items (b), (c), (d), (e) and (f), substitute the following entries, respectively, namely:—*

"Five naye paise in the rupee."

"Eight naye paise in the rupee."

"Twelve naye paise in the rupee."

"Nineteen naye paise in the rupee."

"Twenty-five naye paise in the rupee." ;

(b) *in sub-paragraph (2), for the existing entry under the heading "Rate" against item (a), substitute the words "two naye paise in the rupee";*

(2) *in paragraph B, for the existing entry under the heading "Rate" substitute the words "forty naye paise in the rupee".*

(Substituted by West Ben. Act XXVIII of 1957, section 8.)

(ii) *in the case of an individual or Hindu undivided family whose only source of agricultural income is the land possessed by such individual or family and cultivated by such individual or the members of such family, as the case may be, with or without the aid of hired labourers, no agricultural income-tax shall be payable by such individual or family on the agricultural income derived from such land if the area of such land does not exceed ¹[eighty] standard bighas;*

(iii) *the agricultural income-tax payable shall in no case exceed half the amount by which the total agricultural income exceeds Rs. ⁴[3,000].*

¹See foot-note 4 on page 322, *ante*.

²These entries under the heading "Rate" against items (c), (d), (e) and (f) were substituted for the original entries by s. 9(1)(d) of the West Bengal Agricultural Income-tax (Amendment) Act, 1949 (West Ben. Act III of 1949).

³These figures within square brackets were substituted for the original figures "3,500", by s. 9(1)(b), *ibid*.

⁴These figures within square brackets were substituted for the figures "3,500" by s. 9(1)(c)(i), *ibid*.

⁵This word within square brackets was substituted for the words "One hundred" by s. 9(1)(c)(ii), *ibid*.

of 1944.]

(The Schedule.)

Explanation.—For the purposes of this Schedule—

- (i) “brother” includes the son and the son of a son of a brother and the widow of a brother;
- (ii) “share of a brother” means the portion of the total agricultural income of a Hindu undivided family which would have been allotted to a brother if a partition of the property of such family had been made on the last day of the previous year;
- (iii) “average rate” means the amount of agricultural income-tax payable by an individual on his total agricultural income divided by the amount of such total agricultural income.

B. In the case of every company, firm or other '[association of persons].

Rate.

On the whole of the total agricultural ²[Four annas] in the rupee.
income.

¹See foot-note 1, on page 326, *ante*.

²These words within square brackets were substituted for the words “Two annas and six pies” by s. 9(2) of the West Bengal Agricultural Income-tax (Amendment) Act, 1949 (West Ben. Act III of 1949).

Bengal Act V of 1944¹

**THE BENGAL ALIENATION OF AGRICULTURAL
LAND (TEMPORARY PROVISIONS) ACT, 1944.**

ADAPTED .. } The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
The Adaptation of Laws Order, 1950.

[4th January, 1945.]

An Act to provide for the restoration to proprietors, tenureholders, raiyats and under-raiyats of certain agricultural lands alienated by them during the year 1943 as a result of the prevailing economic distress.

WHEREAS it is expedient to provide for the restoration to proprietors, tenure-holders, *rai-yats* and under-*rai-yats* of certain agricultural lands alienated by them during the year 1943 as a result of the prevailing economic distress;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Alienation of Agricultural Land (Temporary Provisions) Act, 1944. **Short title and extent.**

(2) It extends to the whole of ²[West Bengal].

2. In this Act unless there is anything repugnant in the **Definitions.** subject or context,—

(1) "agricultural land"—

(a) when used with reference to a proprietor or tenure-holder, means any land which on the date of the transfer of such land by sale referred to in sub-section (I) of section 4 was comprised in the estate or tenure, as the case may be, of, and held in *khas* by, the proprietor or tenure-holder who made such transfer; and

(b) when used with reference to a *raiyat* or under-*raiyat*, means a holding or a part of a holding of such *raiyat* or under-*raiyat*;

- (2) "Collector" means the Collector of a district or any other officer appointed by the ³[State] Government to discharge the functions of Collector under this Act:

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 27th January, 1944, Pt IVB, page 26 ; for the proceedings of the Council, see the proceedings of the meetings of the Bengal Legislative Council held on the 8th, 10th, 15th February, 6th, 7th, 20th, 21st and the 23rd March, 1944 ; for the proceedings of the Assembly see the proceedings of the meetings of the Bengal Legislative Assembly held on the 20th and the 21st November, 1944.

*The words within square brackets were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³The word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Sections 3, 4.)

- (3) "complete usufructuary mortgage" means a transfer of the right of possession in any land for the purpose of securing the payment of the mortgage debt upon the condition that the said debt shall be deemed to be extinguished by the profits arising from the land during the period of the mortgage;
- (4) "prescribed" means prescribed by rules made under this Act;
- (5) "proprietor," "tenure-holder," "*raiyat*," "under-*raiyat*," "landlord," "estate," "tenure," "holding" and "improvement" have the same meanings as they have in the Bengal Tenancy Act, 1885;
- (6) references to "proprietor," "tenure-holder," "*raiyat*," "under-*raiyat*" and "transferee" shall be deemed to include references to their successors in interest.

VIII of
1885.

Effect of provisions of this Act where inconsistent with other law.

3. The provisions of this Act shall have effect notwithstanding anything to the contrary in any other law for the time being in force.

Procedure for effecting restoration of lands alienated by proprietors, tenure-holders, *raiya*s or under-*raiya*s in 1943.

4. (1) If on or after the 1st January, 1943, and before the 1st January, 1944, a proprietor, tenure-holder, *raiyat* or under-*raiyat* has transferred any agricultural land by sale for any consideration the amount or value of which does not exceed two hundred and fifty rupees, and if,—

- (a) he applies in the prescribed manner to the Collector at any time before the 25th day of December, 1945, for the restoration of such land to him; and
- (b) he satisfies the Collector that he could not have maintained himself or his family except by making such alienation of such land,

the Collector shall, after giving the transferee and if such land is in the possession of any person other than the transferee, such other person also an opportunity of being heard, make an order in writing restoring such land to such proprietor, tenure-holder, *raiyat* or under-*raiyat*, as the case may be, and directing such proprietor, tenure-holder, *raiyat* or under-*raiyat* in the manner provided in sub-section (2) to pay in ten annual instalments by such dates as may be specified in the order the amount of such consideration or its value together with interest on such amount at the rate of three and one-eighth *per centum per annum* from the date of his receipt of such consideration and the amount of any compensation for improvements effected to such land,

of 1944.]

(Section 4.)

allowed by the Collector and determined by him in the manner prescribed, less the amount determined in the manner prescribed of the net income from such land of the person in possession of such land as a result of such alienation:

Provided that the first of such instalments shall be payable on a date not later than the 1st day of *Baishakh* next following the date of the order.

(2) When the Collector makes an order for payment by instalments under sub-section (1), he shall direct such instalments to be paid—

(a) in the case where the agricultural land in respect of which such order is made has been alienated by the transferee before the date of such order by means of a *bona fide* transfer for valuable consideration or a *bona fide* gift by a registered instrument or *heba*, to the person in possession of such land as a result of such alienation;

(b) in the case where such land has been alienated by the transferee before such date by means of a *bona fide* lease for valuable consideration or a usufructuary mortgage, to the transferee and the person in possession of such land as a result of such alienation in such proportion and in such manner as may be determined by the Collector and specified in the order; and

(c) in other cases, to the transferee:

Provided that if such land is subject to a *bona fide* mortgage other than a usufructuary mortgage and such mortgage was executed after the transfer of such land referred to in sub-section (1), the Collector shall direct that such instalments shall first be paid to the mortgagee until the amount due under the mortgage as determined by the Collector is paid off and that thereafter any such instalments or part thereof still remaining due shall be paid in the manner provided in clause (a), clause (b) or clause (c) of this sub-section, as the case may be.

(3) Where an application made under sub-section (1) is accompanied by a statement verified in the manner prescribed that the proprietor, tenure-holder, *raiyat* or under-*raiyat* who made the transfer of the agricultural land by sale referred to in that sub-section could not have maintained himself or his family except by making such alienation of such land, the Collector shall for the purpose of clause (b) of that sub-section presume such statement to be correct until the contrary is proved.

(Sections 5, 6.)

(4) The amount ordered to be paid by instalments by a proprietor, tenure-holder, *raiyat* or under-*raiyat* under sub-section (1) shall be a charge on the agricultural land in respect of which the order under that sub-section has been made.

(5) Where any agricultural land in respect of which an order under sub-section (1) is made is, after the date on which such order takes effect under sub-section (1) of section 5, sold in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913, other than a certificate for the recovery of any amount payable under such order, the whole of the amount payable under the said order then remaining due shall notwithstanding anything contained in such order at once become due and payable.

Ben. Act
III of 1913.

Effect of
order for
restoration
of lands.

5. (1) When the Collector makes an order under sub-section (1) of section 4 restoring any agricultural land to a proprietor, tenure-holder, *raiyat* or under-*raiyat*, such order shall have effect on the 1st day of *Baisakh* next following the date of the order.

(2) From the date on which an order under sub-section (1) of section 4 takes effect under sub-section (1) of this section, the right, title and interest in the agricultural land accruing to the transferee as a result of the transfer referred to in sub-section (1) of section 4 shall, subject to the provisions of sub-section (4) of that section, be deemed to have vested in the proprietor, tenure-holder, *raiyat* or under-*raiyat*, as the case may be, free from all encumbrances, if any, which have been created after the date of such transfer.

(3) If on or before the date on which an order under sub-section (1) of section 4 takes effect under sub-section (1) of this section, the person in possession of the agricultural land as a result of the transfer referred to in sub-section (1) of section 4 has not yielded possession of such land to the proprietor, tenure-holder, *raiyat* or under-*raiyat*, as the case may be, the Collector may of his own motion, and shall on the application of such proprietor, tenure-holder, *raiyat* or under-*raiyat*, eject such person and place such proprietor, tenure-holder, *raiyat* or under-*raiyat*, as the case may be, in possession of such land.

Recovery
of sums
due under
an order
under sec-
tion 4 as a
public
demand.

6. Any sum payable under an order made under section 4 shall be recoverable as a public demand:

Provided that the Certificate Officer shall not order the execution of a certificate signed under the Bengal Public Demands Recovery Act, 1913, for the recovery of any amount due under an order made under sub-section (1) of section 4 by the sale of the agricultural land in respect of which the order under that sub-section has been made unless he is satisfied that all the instalments payable under the said order have already become due.

of 1944.]

(Sections 7, 8.)

7. A proprietor, tenure-holder, *raiyat* or under-*raiyat* to whom any agricultural land has been restored by an order under sub-section (1) of section 4 shall not as long as there remains unpaid any sum payable by such proprietor, tenure-holder, *raiyat* or under-*raiyat*, as the case may be, under the order made under that sub-section, alienate by sale, lease, gift or other form of transfer or create any charge upon such land or any portion thereof and, notwithstanding anything contained in any other law for the time being in force, any alienation or charge so made shall be void and of no effect.

Prohibition of alienation until sums due under an order under section 4 are paid.

8. (1) A proprietor, tenure-holder, *raiyat* or under-*raiyat* who is entitled to apply for the restoration of any agricultural land under sub-section (1) of section 4 may, instead of applying for such restoration under that sub-section apply at his option for the conversion of the transfer by sale of such land into a complete usufructuary mortgage and in such case if the proprietor, tenure-holder, *raiyat* or under-*raiyat* otherwise complies with the provisions of clauses (a) and (b) of the said sub-section, the Collector shall, first determine the amount which would have been payable by such proprietor, tenure-holder, *raiyat* or under-*raiyat*, as the case may be, under the said sub-section if an order under that sub-section for the restoration of such land had been made and, then make an order in writing converting the said transfer by sale into a complete usufructuary mortgage with—

Option of conversion of transfer by sale of land into complete usufructuary mortgage.

(a) in the case of alienation by any of the means referred to in clause (a) of sub-section (2) of section 4, the person in possession of such land as a result of such alienation as the mortgagee, and

(b) in all other cases, the transferee as the mortgagee,

for a period of ten years or such shorter period as in the circumstances of the particular case is in the opinion of the Collector justified, and the amount so determined by the Collector shall be deemed to be the mortgage debt for the payment of which such mortgage is created.

(2) When the Collector makes an order under sub-section (1) converting a transfer by sale into a complete usufructuary mortgage for a period specified by him, the right, title and interest in the agricultural land accruing to the transferee as a result of the transfer shall, with effect from the date of such order, be deemed to have vested in such proprietor, tenure-holder, *raiyat* or under-*raiyat*, as the case may be, subject to such complete usufructuary mortgage and free from all other encumbrances, if any, created after the date of the transfer and the liability for the payment of any amount referred to in sub-section (1) shall be deemed to be extinguished on the expiry of the said period.

(Sections 9—11.)

(3) When the Collector makes an order under sub-section (1) converting a transfer by sale into a complete usufructuary mortgage for a period specified by him, such complete usufructuary mortgage may notwithstanding anything contained in sub-section (2) be redeemed at any time before the expiry of such period.

(4) On the expiry of the period of the mortgage or on the redemption of the mortgage before the expiry of such period under sub-section (3), if the mortgagee does not yield possession of the mortgaged land to the proprietor, tenure-holder, *raiyat* or under-*raiyat*, as the case may be, the Collector may of his own motion, and shall on the application of such proprietor, tenure-holder, *raiyat* or under-*raiyat*, eject the mortgagee and place, such proprietor, tenure-holder, *raiyat* or under-*raiyat*, as the case may be, in possession of such land.

Notice of
restoration
of land or
of the con-
version of
the trans-
fer by sale
of land
into a com-
plete
usufruc-
tuary
mortgage
on the
landlord.

9. Before making an order under sub-section (1) of section 4 restoring any agricultural land to a tenure-holder, *raiyat* or under-*raiyat* or an order under sub-section (1) of section 8 converting a transfer by sale of any agricultural land of a tenure-holder, *raiyat* or under-*raiyat* into a complete usufructuary mortgage the Collector shall require such tenure-holder, *raiyat* or under-*raiyat* to deposit such fee as may be prescribed for the service of a notice of such order in the prescribed form in the case, where such order relates to any agricultural land of a tenure-holder on the landlord of the tenure in which such land is comprised and, in the case where such order relates to any agricultural land of a *raiyat* or under-*raiyat*, on the landlord under whom such land is held, and the Collector shall as soon as may be after such order is made cause such notice to be served on such landlord in the prescribed manner, and on receipt of such notice the landlord shall cause his rent roll to be corrected accordingly.

Bar of
jurisdiction
of High
Court and
Civil
Courts.

10. Neither the High Court nor any Civil Court shall have jurisdiction in any matter which the Collector is empowered to dispose of under this Act:

Provided that any person who is dissatisfied with any order of the Collector made under section 4 or sub-section (1) of section 8 may within thirty days from the date of such order apply in the prescribed manner to the District Judge for the revision of such order and the decision of the District Judge thereon shall be final.

Power to
make rules.

11. (1) The ¹[State] Government may make rules for carrying out the purposes of this Act.

of 1944.]

(Section 11.)

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the manner in which a proprietor, tenure-holder, *raiyat* or under-*raiyat* is to apply to the Collector under clause (a) of sub-section (1) of section 4;
- (b) the manner in which the Collector is to determine the amount of any compensation allowed under sub-section (1) of section 4;
- (c) the manner in which the net income referred to in sub-section (1) of section 4 is to be determined;
- (d) the manner in which the verification of the statement referred to in sub-section (3) of section 4 is to be made;
- (e) the fee to be deposited for the service of the notice referred to in section 9 and the form and the manner of service of such notice; and
- (f) the manner of application for revision under the proviso to section 10.

Bengal Act VI of 1944¹

THE BENGAL DISEASES OF ANIMALS ACT, 1944.

AMENDED West Ben. Act XIX of 1949.

ADAPTED { The Indian Independence
(Adaptation of Bengal and
Punjab Acts) Order, 1948.
The Adaptation of Laws Order,
1950.

[11th January, 1945.]

An Act to provide for the prevention of the spread of contagious diseases amongst animals in Bengal.

WHEREAS it is expedient to provide for the prevention of the spread of contagious diseases amongst animals in Bengal;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Diseases of Animals Act, 1944. Short title and extent.

(2) It extends to the whole of ²[West Bengal].

2. In this Act unless there is anything repugnant in the subject or context,— Definitions.

(1) “animals” means bulls, bullocks, cows, oxen, heifers, calves, buffaloes, sheep, goats, and all other ruminating animals, dogs, swine and includes such other domesticated animals excepting horses, camels, asses and mules as may be specified in this behalf by the ³[State] Government by notification in the *Official Gazette*;

(2) “contagious disease” means rinderpest (that is to say, the disease commonly known as cattle plague), anthrax, haemorrhagic septicaemia, foot-and-mouth disease, rabies and includes such other diseases as may be declared by the ³[State] Government by notification in the *Official Gazette* to be contagious diseases for the purposes of this Act;

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 27th January, 1944, Pt IVB, page 23; the Report of the Select Committee was presented to the Council on the 17th April, 1944, for the proceedings of the Council see the proceedings of meetings of the Bengal Legislative Council, held on the 8th February, 23rd March and 17th, 25th and the 26th April, 1944: for the proceedings of the Assembly see the proceedings of the meeting of the Bengal Legislative Assembly, held on the 22nd November, 1944.

²These words within square brackets were substituted for the word “Bengal” by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³This word within square brackets was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Section 3.)

- (3) "infected area" means an area in respect of which a notification under section 5 is in force;
- (4) "infective" used with reference to an animal means affected by a contagious disease or having recently been in contact with or proximity to an animal so effected;
- (5) "prescribed" means prescribed by rules made under this Act;
- (6) "Veterinary Assistant" means a Veterinary Assistant of the ¹[West Bengal] Civil Veterinary Department acting within the local limits of his jurisdiction and in the absence of the said Veterinary Assistant from his jurisdiction, includes any officer of the said department who in the opinion of the ²[State] Government possesses suitable qualifications in veterinary medicine and who is authorised by the ²[State] Government to carry on the duties of the Veterinary Assistant under this Act in such absence.

**Report of
contagious
disease.**

3. (1) Every owner or person in charge or having control of an animal, and every veterinary practitioner attending any animal in the course of his veterinary practice or otherwise, who has reason to believe that such animal is infective shall forthwith report and any other person who has reason to believe that an animal is infective may report the fact to the President of the union board within the area of which such animal is for the time being kept.

(2) The President of the union board on receiving any report under sub-section (1) shall without delay communicate such report to the Subdivisional Magistrate who shall, unless for reasons to be recorded in writing he considers that the report is unfounded in fact, instruct the Veterinary Assistant to proceed to the place where the animal is for the time being kept and examine the animal and inquire into the circumstances of the case, and on receiving such instructions the Veterinary Assistant shall without delay comply therewith.

(3) Whenever a Veterinary Assistant has reason to believe that any animal within his jurisdiction is infective he shall proceed as soon as possible to the place where the animal is and examine it and inquire into the circumstances of the case, notwithstanding that no report under sub-section (2) in respect of such animal has been received by him.

¹See footnote 2 on page 375, *ante*.

²See footnote 3 on page 375, *ante*.

of 1944.]

(Sections 4—6.)

(4) If after the examination and inquiry referred to in sub-section (2) or sub-section (3) the Veterinary Assistant is of the opinion that the animal is infective, he shall report the matter in the manner prescribed to the ¹[State] Government or to such officer of the ²[West Bengal] Civil Veterinary Department as the ¹[State] Government may appoint in this behalf and the Veterinary Assistant shall also take such further action under the provisions of this Act as may be necessary or expedient and at the same time shall send a copy of such report to the Subdivisional Magistrate.

4. Every owner or person in charge or having control of an animal who has reason to believe that such animal is infective shall as far as may be possible in the circumstances segregate such animal in a place apart from all other animals which are not infective and shall take all possible steps to prevent any animal which is not infective from coming into contact with or approaching near to such animal.

Duty to segregate infective animals.

5. (1) The ¹[State] Government or such officer as it may authorise in this behalf may by notification published in the manner prescribed declare any area in which any contagious disease has broken out, or any area within which in the opinion of the ¹[State] Government, or such officer, there is a danger of the spread of any such disease, to be an infected area.

Declaration of infected areas.

(2) Every notification under sub-section (1) shall specify the limits of the area which is declared to be an infected area and shall also specify the contagious disease in respect of which the area is declared to be an infected area.

6. (1) Save in accordance with the conditions of a licence granted by Veterinary Assistant—

Prohibition of movement of animals, etc., into or out of infected areas.

(a) no person shall remove any animal, alive or dead, or any product of any animal (including its excreta) or any part of any animal or any fodder, bedding, harness or other things used in connection with an animal, and

(b) no person owning or having charge or control of any animal shall allow such animal to proceed,

from any place within an infected area to any place outside such area or from any place outside an infected area to any place within such area.

¹See footnote 3 on page 375, *ante*.

²See footnote 2 on page 375, *ante*.

(Sections 7, 8.)

(2) Nothing in sub-section (1) shall prevent the carriage by railway or by any mechanically propelled vessel of a type approved by the ¹[State] Government of any animal or thing referred to in that sub-section through an infected area:

Provided that if such animal or thing at any stage during its carriage by railway or such vessel through an infected area is unloaded therein it shall not be removed therefrom save in accordance with the provisions of sub-section (1).

**Preventive
vaccina-
tion or
inocula-
tion in
infected**

7. (1) In all cases in which preventive vaccination or inoculation is possible and practicable against the contagious disease in respect of which an area has been declared to be an infected area, the Veterinary Assistant shall vaccinate or inoculate, as the case may be, such kinds or classes of animals in that area as may be prescribed in respect of such disease and the owner or person in charge or having control of every such animal shall render every facility and assistance to him in carrying out such vaccination or inoculation.

(2) When a Veterinary Assistant vaccinates or inoculates any animal he may for the purpose of identification also mark such animal in such manner as may be prescribed.

**Compul-
sory
segrega-
tion and
treatment
of animals
in infected
areas.**

8. (1) Where a Veterinary Assistant, after due examination of an animal and such enquiry into the circumstances of the case as may be necessary, is of the opinion that such animal is infective, he may by order in writing direct the owner or person in charge or having control of such animal,—

(a) to keep it where it is for the time being, or to remove it or allow it to be removed to such place of isolation or segregation as may be specified in the order;

(b) to subject it to such treatment as may be specified in the order;

and such owner or person in charge or having control of such animal shall comply with such order:

Provided that where there is no person in charge or having control of the animal and the owner is either unknown and cannot be ascertained without undue delay, or the order cannot be communicated to him without undue delay or the owner or person in charge or having control of the animal fails to comply with the order within such time as in the opinion of the Veterinary Assistant is reasonable, the Veterinary Assistant shall seize the animal and remove it to a place of isolation or segregation and may subject it to such treatment as may be necessary.

¹See footnote 3 on page 375, ante.

of 1944.]

(Sections 9—11.)

(2) If the owner of an animal seized under the proviso to sub-section (1) or his authorised agent applies in the prescribed manner for the return of such animal to his possession, the animal shall be so returned if such owner or his authorised agent pays any expenses, calculated in the prescribed manner, incurred for the upkeep of the animal up to the date of its release:

Provided that on the release of the animal the owner or his authorised agent, as the case may be, shall comply with any order which the Veterinary Assistant may see fit to issue under sub-section (1).

(3) If the owner of an animal seized under the proviso to sub-section (1) or his authorised agent does not apply for the release of the animal under sub-section (2) and the animal is, in the opinion of the Veterinary Assistant, no longer likely to infect any other animals with the contagious disease in respect of which it was seized, the Veterinary Assistant shall send the animal to the nearest cattle pound or deal with it in such other manner as may be prescribed.

(4) Notwithstanding anything in sub-sections (1), (2) and (3) if the Veterinary Assistant, after due examination of any animal, certifies in writing that such animal is affected with any of such contagious diseases as may be prescribed in this behalf, he may destroy the animal or deal with it in such other manner as may be prescribed.

9. Subject to such rules as may be prescribed, the Veterinary Assistant may, by order in writing, require the owner, occupier or person in charge of any building, yard, vessel or vehicle in which an infective animal has been kept to have such building, yard, vehicle or vessel disinfected; and the internal fittings thereof and other things found therein to be disinfected or destroyed, in such manner and to such extent as may be specified in the order, and such owner, occupier or person in charge shall comply with such order.

Disinfection of buildings, etc., in infected areas.

10. No person shall organise, promote or hold in any infected area any animal market, animal fair, animal exhibition or other concentration of animals whether for the purpose of sport or trade, without the permission in writing of the ¹[State] Government or such officer as the ¹[State] Government may authorise in this behalf.

Prohibition of markets, fairs, etc., in infected areas.

11. If the Veterinary Assistant suspects that any animal is infective he may subject it to such tests as may be prescribed and the owner or person in charge or having control of such animal shall render every facility and assistance to him in carrying out the tests.

Power of Veterinary Assistant to subject infective animals to tests.

¹See footnote 3 on page 375, ante.

(Sections 12—16.)

Power of
Veterinary
Assistant
to carry
out *post
mortem*
examina-
tions.

12. Subject to such rules as may be prescribed the Veterinary Assistant may make or cause to be made a *post mortem* examination of any animal which at the time of its death was infective or suspected to have been then infective and for this purpose he may cause the carcass of any such animal to be exhumed.

Manner of
burial or
disposal of
carcasses
of infec-
tive
animals.

13. (1) Every animal which at the time of its death is infective or suspected to be infective shall be buried at least six feet below the surface of the ground or dealt with in such other manner as may be prescribed.

(2) Except in the case of the exhumation of a carcass under section 12, no person shall disinter or otherwise remove the carcass of an animal buried in compliance with the provisions of sub-section (1).

Prohibi-
tion on
bringing
infective
animals
into any
market,
fair, etc.

14. Whoever brings or attempts to bring into any market, fair, exhibition or other concentration of animals, any animal which he knows or has reason to believe to be infective shall be punished with fine which may extend in the case of a first conviction to fifty rupees and in the case of a second or subsequent conviction to one hundred rupees.

Prohibi-
tion of
sale or
transfer
of infective
animals.

15. Whoever sells or attempts to sell or to transfer in any manner to another person any animal which he knows or has reason to believe to be infective shall be punished with fine which may extend in the case of a first conviction to one hundred rupees and in the case of a second or subsequent conviction to five hundred rupees.

Penalties.

16. (1) Whoever,—

- (a) having reason to believe that an animal is infective fails to give information as required by sub-section (1) of section 3, or
- (b) fails to segregate any animal as required by section 4, or
- (c) contravenes the provisions of section 6, or
- (d) fails to render every facility and assistance to a Veterinary Assistant as required by section 7, or
- (e) fails to comply with the order of a Veterinary Assistant made under sub-section (1) of section 8, or
- (f) fails to comply with an order made under section 9, or
- (g) organises, holds or promotes, as the case may be, any animal market, animal fair, animal exhibition or other concentration of animals in contravention of the provisions of section 10, or

VI of 1944.]

(Sections 17—22.)

(h) fails to render every facility and assistance to a Veterinary Assistant as required by section 11, or

(i) contravenes any of the provisions of section 13,

shall be punished with fine which may extend to fifty rupees.

(2) If any person having been convicted of an offence punishable under any of the clauses (a) to (i) of sub-section (1) is again guilty of any offence punishable under that clause or is guilty of any offence punishable under any of the remaining said clauses he shall be punished for every such subsequent offence with fine which may extend to one hundred rupees.

17. Subject to such rules, as may be prescribed, a Veterinary Assistant may enter and inspect any land, building or other place or any vessel or vehicle for the purpose of exercising the powers and performing the duties conferred or imposed on him by or under this Act.

Power of Veterinary Assistant to enter and inspect land, etc.

18. (1) Where by any requisition or order under this Act or under any notification or rule issued thereunder, any person is required to take any measures or to do anything in respect of any property owned or occupied by him or in his charge, a reasonable time shall be specified in such a requisition or order within which such measures shall be taken or such thing shall be done, as the case may be.

Time for complying with and enforcement of orders.

(2) If such measures are not taken or such things are not done within the time specified in accordance with the provisions of sub-section (1), the authority issuing the requisition or order may cause the measures to be taken or the thing to be done and the cost thereof shall be recoverable from the person who was required to take such measures or to do such thing as if it were an arrear of land revenue.

19. Any Police Officer not below the rank of a Sub-Inspector may at the request in writing of a Veterinary Assistant arrest, without warrant, any person who has been concerned in any offence under this Act.

Power of Police Officer to arrest without warrant.

20. No Court shall take cognizance of any offence under this Act except upon the complaint or report of a Veterinary Assistant.

Cognizance of offences.

21. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try an offence under this Act.

Jurisdiction of Courts.

22. No person shall be entitled to any compensation in respect of the destruction of any animal or thing or of any other loss, injury, detriment or inconvenience caused him by reason of anything done under this Act in good faith.

Bar of claim to compensation.

(Sections 23, 24.)

Indemnity. **23.** No suit, prosecution or other legal proceedings shall lie against any servant of the ¹[Government] for anything which is in good faith done or intended to be done under this Act or any rule made thereunder.

Power to make rules. **24.** (1) The ²[State] Government may subject to the condition of previous publication make rules³ for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for,—

- (a) the manner in which a report required in sub-section (4) of section 3 shall be made;
- (b) the manner in which a notification issued under sub-section (1) of section 5 may be published;
- (c) the kinds or classes of animals which shall be vaccinated or inoculated in respect of each contagious disease referred to in sub-section (1) of section 7;
- (d) the manner in which an animal may be marked under sub-section (2) of section 7;
- (e) the manner in which an application under sub-section (2) of section 8 shall be made;
- (f) the manner in which the expense referred to in sub-section (2) of section 8 shall be calculated;
- (g) the manner in which an animal may be dealt with under sub-section (3) of section 8;
- (h) the contagious diseases referred to in sub-section (4) of section 8;
- (i) the rules subject to which a Veterinary Assistant may issue an order under section 9;
- (j) the tests to which an animal may be subjected under section 11;
- (k) the rules subject to which a *post mortem* examination of an animal may be made under section 12;
- (l) the manner in which an animal may be ⁴[dealt with] under sub-section (1) of section 13;
- (m) the rules subject to which a Veterinary Assistant may take action under section 17.

¹The word within square brackets was substituted for the word "Crown" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

²See foot-note 3 on page 375, *ante*.

³For rules under this Act, see the Bengal Statutory Rules and Orders, 1940.

⁴The words within square brackets were substituted for the word "buried" by section 2, and the First Schedule to, the West Bengal Repealing and Amending Act, 1949 (West Ben. Act XIX of 1949).

Bengal Act XII of 1946¹

THE BENGAL SPECIAL TRIBUNALS (CONTINUANCE) ACT, 1946.

ADAPTED

.. The Adaptation of Laws Order, 1950.

[30th September, 1946.]

An Act to provide for the continuance of the Special Tribunals at Calcutta constituted under the Criminal Law Amendment Ordinance, 1943.

XXIX of
1943.

WHEREAS by notifications of the Central Government under section 3 of the Criminal Law Amendment Ordinance, 1943, two Special Tribunals were constituted to sit at Calcutta, and under section 5 thereof certain cases were allotted to them for trial;

AND WHEREAS upon the expiration of a period of six months after the Proclamation of Emergency in force at the commencement of the said Ordinance has ceased to operate, doubts may arise as to the competency of the said Tribunals to continue to function and dispose of the cases not disposed of before the expiration of the said period;

AND WHEREAS it is necessary that the said Tribunals should so continue to function and dispose of the said cases;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Special Tribunals (Continuance) Act, 1946.

Short title
and com-
mence-
ment.

(2) It shall come into force on the 1st day of October, 1946.

2. In this Act,—

Definitions.

(1) “the Ordinance” means the Criminal Law Amendment Ordinance, 1943;

(2) “the Tribunals” means the Special Tribunals sitting at Calcutta known as the First Special Tribunal at Calcutta and the Second Special Tribunal at Calcutta, constituted by notifications of the Central Government under section 3 of the Ordinance.

3. (1) The Tribunals shall have jurisdiction to try all cases allotted to them under the Ordinance and not disposed of before the commencement of this Act, as if the Tribunals had been constituted by or under ²[a Provincial Act or a State Act].

Continu-
ance of the
Tribunals.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 20th July, 1946, Pt. IVE, page 2(ii); for proceedings of the Bengal Legislative Assembly, see the proceedings of the meeting of the Bengal Legislative Assembly held on the 17th September, 1946.

²These words within brackets were substituted for the words “an Act of the Provincial Legislature” by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

[Ben. Act XII of 1946.]

(Section 3.)

(2) All provisions of the Ordinance except sub-section (1) of section 5 shall continue in force and apply in relation to the Tribunals and the cases aforesaid, subject to the modification that the powers of the Central Government under clause (b) of section 3, sub-section (3) of section 4 and section 11 shall, as from the commencement of this Act, be powers of the ¹[State] Government.

(3) All notifications issued, all appointments and all rules made, by the Central Government under section 3, sub-section (3) of section 4 and section 11, respectively, of the Ordinance shall, so far as they apply to the Tribunals, continue in force until superseded or modified by the ¹[State] Government under this Act.

(4) For the avoidance of doubt it is hereby declared that all proceedings had before, and all orders issued by, the Tribunals under the Ordinance before the commencement of this Act shall continue to have effect, and it shall not be necessary for the Tribunals to recommence any of the said proceedings or re-issue any of the said orders.

¹The word within square brackets was substituted for the word "Provincial" by paragraph 4 (1) of the Adaptation of Laws Order, 1950.

Bengal Act XIV of 1946¹

THE CALCUTTA DISTURBANCES COMMISSION OF ENQUIRY ACT, 1946.

ADAPTED

.. { The Indian Independence
(Adaptation of Bengal and
Punjab Acts) Order, 1948.

[12th October, 1946.]

An Act to vest a Commission of Enquiry with certain powers.

WHEREAS a Commission of Enquiry has been appointed to enquire into and report on the causes of and the measures taken to deal with the disturbances which occurred in the town and neighbourhood of Calcutta in the month of August, 1946;

AND WHEREAS it is expedient to vest the said Commission of Enquiry with powers of a Civil Court;

It is hereby enacted as follows:—

1. (1) This Act may be called the Calcutta Disturbances Commission of Enquiry Act, 1946.

Short title
and extent.

(2) It extends to the whole of ²[West Bengal].

2. The Commission of Enquiry appointed under the Resolution of the Government of Bengal in the Home Department, No. 4309P., dated the 11th September, 1946 as amended from time to time (hereinafter referred to as the Commission) shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery and production of documents, and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898. The Commission shall furthermore have the same powers of dealing with contempt of the Commission or any of its members or of, or in respect of, any proceedings of the Commission as if the Commission were a High Court established by Letters Patent.

Powers of
Commission
of Enquiry.

3. Except in a prosecution for giving false evidence, no statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceedings:

Statements
made by
persons to
the Com-
mission.

Provided that such statement—

(a) is one which the Commission permits or requires to be made before it by such person; and

(b) is relevant to the subject matter of the inquiry.

Act V of
1898.

¹For statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 11th September, 1946, Pt. IVB, page (ii); for proceedings of the Bengal Legislative Council, see the Bengal Legislative Council Debates No. 18 (pages 319-325), No. 22 (pages 367-381) and No. 23 (pages 391-400), dated the 13th, 19th and 20th September, 1946, respectively; and for proceedings of the Bengal Legislative Assembly, see the proceedings of the meeting of the Bengal Legislative Assembly held on the 28th September, 1946.

²The words within square brackets were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

Bengal Act XV of 1946¹

THE MURSHIDABAD ACT, 1946.

[21st November, 1946.]

An Act to provide for the payment of certain allowances to certain members of the family of the Nawab Bahadur of Murshidabad and to create a charge on the agricultural lands of the Nawab Bahadur for payment of the said allowances.

WHEREAS it is expedient to provide for the payment of certain allowances to certain members of the family of the Nawab Bahadur of Murshidabad and to create a charge on the agricultural lands of the Nawab Bahadur for such payment;

It is hereby enacted as follows:—

Short title. 1. This Act may be called the Murshidabad Act, 1946.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

- (a) “daughter” means a legitimate daughter;
- (b) “deceased Nawab Bahadur” means any person who was Nawab Bahadur of Murshidabad during any time after the year 1906, but who has ceased to be so by death or otherwise;
- (c) “Indenture” means the Indenture set forth in the schedule to the Murshidabad Act, 1891;
- (d) “Nawab Bahadur” means the Nawab Bahadur of Murshidabad for the time being;
- (e) “son” means a legitimate son;
- (f) “younger son” means a son of a deceased Nawab Bahadur other than the son who has succeeded to the titles of the Nawab Bahadur of Murshidabad and Amir-ul-Omrah.

XV of
1891.

Allow-
ances to
daughters
and
younger
sons, and
children
of a
deceased
younger
son, of
a deceased
Nawab
Bahadur
and the
charging
of agri-
cultural
lands of
the Nawab
Bahadur
for pay-
ment
thereof.

3. (1) Notwithstanding anything contained in the Murshidabad Act, 1891, and the Indenture included in and confirmed by the said Act—

- (a) each daughter of a deceased Nawab Bahadur shall be entitled to receive a monthly allowance of two hundred and fifty rupees,
- (b) each younger son of a deceased Nawab Bahadur shall be entitled to receive a monthly allowance of one thousand eight hundred rupees,
- (c) the sons and daughters (if any) of a deceased younger son of any deceased Nawab Bahadur shall be entitled to monthly allowances which in the aggregate shall equal six hundred rupees, the sons

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 19th September, 1946, Part IVB, page (ii); for proceedings of the Bengal Legislative Assembly, see the proceedings of the meeting of the Bengal Legislative Assembly held on the 28th September, 1946.

(Section 4.)

receiving equal allowances and the daughters receiving equal allowances and each son receiving double the allowance of each daughter,

in the manner provided in sub-section (2), and the said allowances shall be payable to the said persons out of the income of the agricultural lands of the Nawab Bahadur mentioned in the schedules annexed to the Indenture and of any agricultural land added whether before or after the commencement of this Act to the said schedules under sub-section (1) of section 3 of the Murshidabad Act, 1891, and all the agricultural lands so mentioned in or added to the said schedules are hereby charged with the due payment of the said allowances :

XV of
1891.

Provided that if in any year the total amount of allowances payable under clauses (a), (b) and (c) exceeds the sum of one lakh of rupees, then in each such year the allowances payable to the persons specified in clause (b) shall be reduced rateably in order that such total may not exceed one lakh of rupees.

(2) The allowances mentioned in clauses (a), (b) and (c) of sub-section (1) shall,—

(a) in the case of a daughter or younger son of a deceased Nawab Bahadur, be payable monthly commencing from the time when the deceased Nawab Bahadur ceased to be Nawab Bahadur of Murshidabad and shall continue to be payable until the said daughter or younger son, as the case may be, dies, and

(b) in the case of a son or daughter of a deceased younger son of any deceased Nawab Bahadur, be payable monthly commencing from the time of decease of the said younger son or the time when the deceased Nawab Bahadur ceased to be Nawab Bahadur of Murshidabad, whichever is later, and shall continue to be payable until the said son or daughter, as the case may be, of the said younger son dies.

Aliena-
tions, etc.,
of, or in
anticipa-
tion of,
allow-
ances to
be void
and
exemp-
tion of
allowances
from
attach-
ment.

4. (1) Notwithstanding anything contained in any other law for the time being in force, all alienations (by sale, gift, assignment or other forms of transfer), agreements, securities or charges of any kind made or created by any person entitled to any allowance under sub-section (1) of section 3 in respect of the said allowance, whether or not such allowance has become payable at or before the date on which such alienations, agreements, securities or charges are made or created, shall be void and of no effect and the allowance shall be payable as if no such alienations, agreements, securities or charges have been made or created.

(2) No allowance payable under section 3 shall, whether it has become so payable or not, be liable to attachment under any process of any Court.

XV of 1946.]

(Sections 5, 6.)

XXIII of
1933.

5. In sub-section (1) of section 7 of the Murshidabad Estate Administration Act, 1933,—

Amend-
ment of
section
7 of Act
XXIII of
1933.

(a) after clause first, the following clause shall be inserted, namely:—

“*Secondly*, the allowances, if any, payable under section 3 of the Murshidabad Act, 1946,” and

(b) for the words “*secondly*” “*thirdly*” and “*fourthly*” the words “*thirdly*”, “*fourthly*” and “*fifthly*” shall respectively be substituted.

Ben. Act
XV of
1945.

6. The Murshidabad Act, 1945, is hereby repealed.

Repeal of
Bengal Act
XV of
1945.

Bengal Act IV of 1947¹

THE CATTLE-TRESPASS (BENGAL AMENDMENT) ACT, 1947.

ADAPTED { The Adaptation of Laws Order,
1950.

[12th June, 1947.]

An Act further to amend the Cattle-trespass Act, 1871, in its application to Bengal.

WHEREAS it is expedient further to amend the Cattle-trespass Act, 1871, in its application to Bengal in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. This Act may be called the Cattle-trespass (Bengal Amendment) Act, 1947. Short title.

2. The Cattle-trespass Act, 1871, hereinafter referred to as the said Act, shall, in its application to ²[West Bengal], be amended in the manner provided in this Act. Applica-
tion of
Act.

3. For section 32 of the said Act as inserted by section 3 of the Cattle-trespass (Bengal Amendment) Act, 1934, the following sections shall be substituted, namely:— Substitu-
tion of new
sections 32
and 33 for
section 32
of Act I of
1871.

“32. (1) The Magistrate of the District may appoint for the purposes of this Act, a Chairman of a Municipality constituted under the Bengal Municipal Act, 1932, or a President of a Union Board constituted under the Bengal Village Self-Government Act, 1919, to discharge the functions of an officer appointed under section 14, in respect of cattle impounded within the area included within that municipality or within the area subject to the jurisdiction of that Union Board, as the case may be:—

Ben. Act
V of 1934. Ben. Act
XV of
1932. Ben. Act
V of 1919. Power for Magistrate of the District to appoint Chairmen of Municipalities or Presidents of Union Boards to discharge the functions of an officer under section 14.

Provided that a Chairman or President so appointed may, by general or special order, delegate to the Vice-Chairman of such municipality or the Vice-President of such Union Board, as the case may be, all or any of the functions of an officer appointed under section 14 which such Chairman or President is entitled to discharge and may at any time withdraw the same.

¹For Statement of Objects and Reason, see the *Calcutta Gazette, Extraordinary* dated the 22nd July, 1946, Pt. IVB, page (ii); for the proceedings of the Assembly, See the proceedings of the meeting of the Bengal Legislative Assembly held on the 19th April, 1947.

²The words within square brackets were substituted for the word “Bengal” by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

[Ben. Act IV of 1947.]

(Section 4.)

(2) A Chairman or President so appointed, or a Vice-Chairman or Vice-President to whom the Chairman or the President, as the case may be, may have delegated all or any of the functions referred to in sub-section (1), shall not, directly or indirectly, purchase any cattle at a sale under this Act.

33. The Magistrate of the District may, by an order
Delegation of certain powers of the Magistrate of the District. in writing, delegate the powers specified below to any Magistrate subordinate to him:—

(1) the determination of the manner of disposal of unclaimed impounded cattle under the proviso to section 14; and

(2) the settlement of claims in respect of surplus unclaimed proceeds of the sale of cattle held in deposit under section 17.”.

Repeal
of Bengal
Act V of
1934.

4. The Cattle-trespass (Bengal Amendment) Act, 1934, Ben. Act v of 1934. is hereby repealed.

West Bengal Act III of 1947¹

THE WEST BENGAL DISTRICT BOARDS ACT, 1947.

AMENDED

West Ben. Act XV of 1948.
West Ben. Act VIII of 1949.
West Ben. Act III of 1950.
West Ben. Act LIII of 1950.

ADAPTED

The Adaptation of Laws
Order, 1950.

[30th December, 1947.]

An Act to provide for the dissolution and constitution of certain district boards.

WHEREAS under the award of the Boundary Commission parts of the districts of Jalpaiguri, Malda, Nadia and Dinajpur have been excluded from the Province of West Bengal;

AND WHEREAS the new districts of ²[Nadia], West Dinajpur, Malda and Jalpaiguri have been constituted comprising respectively the parts of the former districts of Nadia, Dinajpur, Malda and Jalpaiguri which have been included within West Bengal under the said award;

AND WHEREAS it is expedient to provide for the dissolution and constitution of certain district boards;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal District Boards Act, 1947.

Short title
and com-
mence-
ment.

West Ben.
Ord. XI
of 1947.

(2) It shall come into force on the date on which the West Bengal District Boards Ordinance, 1947, ceases to operate.

10 & 11,
Geo. VI,
c. 30.

2. In this Act, the expression "Boundary Commission" means the Boundary Commission referred to in the Indian Independence Act, 1947.

Definition.

Ben. Act.
III of
1885.

3. Notwithstanding anything contained in the Bengal Local Self-Government Act of 1885 or in any other law for the time being in force, on and from the date on which the award of the Boundary Commission came into force the district boards of the districts of Nadia, Dinajpur, Malda and Jalpaiguri constituted under the said Act shall be deemed to have been dissolved and every member of each such board

Dissolution
of certain
district
boards.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 15th November, 1947, Part IV, page 243; for proceedings of the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 26th November, 1947.

²This word within square brackets was substituted for the word "Nava-dwip" by the West Bengal District Boards (Amendment) Act, 1948 (West Bengal Act XV of 1948).

[West Ben. Act

(Sections 4—6.)

shall be deemed to have ceased to hold office as such member in so far as such boards had authority over any area included within West Bengal under the said award.

Constitu-
tion of
certain
district
boards.

4. (1) Notwithstanding anything contained in the Bengal Local Self-Government Act of 1885 or in any other law for the time being in force, the ¹[State] Government may, by notification in the *Official Gazette*, constitute district boards of the districts of ²[Nadia], West Dinajpur, Malda and Jalpaiguri in such manner and consisting of such number of members as it may determine in this behalf.

(2) The district boards constituted under sub-section (1) shall be deemed to have been constituted on and from the date on which the award of the Boundary Commission came into force.

Term of
office of
members.

5. The ¹[State] Government may, by notification in the *Official Gazette*, fix the term of office of members of the district boards constituted under section 4:

Provided that the term of office so fixed shall not exceed ³[four years, four months and fifteen days] from the date on which the award of the Boundary Commission came into force.

Reconsti-
tution of
certain
District
Boards
in accord-
ance with
the provi-
sions of the
Bengal
Local Self-
Govern-
ment Act
of 1885.

⁴5A. On the expiration of the term of office of the members of the District Boards constituted under section 4, the said District Boards shall be reconstituted in accordance with the provisions of the Bengal Local Self-Government Act of 1885; and for the purpose of such reconstitution, the members of the said District Boards shall be elected, before the expiry of the term of office of the members of the District Boards constituted under section 4, in accordance with the provisions of the Bengal Local Self-Government Act of 1885 and the rules framed thereunder and the persons who ceased to hold their offices under section 3 shall not be deemed disqualified for such elections if they are otherwise qualified therefor.

Ben. Act
III of 1885.

Savings.

6. Any rules, by-laws, notifications or directions issued or anything done or any action taken or any suit instituted or any proceedings commenced by or against the district

¹This word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²See foot-note 2 on p. 393, *ante*.

³The words "and six months" were originally inserted after the words "two years" by sec. 2 of West Ben. Act VIII of 1949, thereafter the words "three years and four months" were substituted for the words "two years and six months" by sec. 2 of West Ben. Act III of 1950, and finally the words "four years, four months and fifteen days" were substituted for the words "three years, and four months" by sec. 2 of the West Bengal District Boards (Second Amendment) Act, 1950 (West Ben. Act LIII of 1950).

⁴This Section was inserted by Sec. 3 of the West Bengal District Boards (Amendment) Act, 1949 (West Ben. Act VIII of 1949).

III of 1947.]

(Section 7.)

boards dissolved under section 3 in relation to the areas comprised in the districts of '[Nadia], West Dinajpur, Malda and Jalpaiguri before the publication of the notification constituting the district boards of the said districts under sub-section (1) of section 4 shall be deemed to have been issued, done, taken, instituted or commenced, as the case may be, by or against the respective district boards as so constituted as if such boards had been constituted and in existence at the time when such rules, by-laws, notifications or directions were issued, thing done, action taken, suit instituted or proceedings commenced.

West Ben.
Ord. XI
of 1947.

- * 7. Any notification issued or anything done or any action taken in exercise of any power conferred by the West Bengal District Boards Ordinance, 1947, shall, on the said Ordinance ceasing to be in operation, be deemed to have been issued, done or taken in exercise of the powers conferred by this Act as if this Act had commenced on the 1st day of November, 1947.

Continu-
ance of
action
taken
under
West
Bengal
Ordinance
XI of
1947.

¹See foot-note 2 on p. 393, *ante*.

West Bengal Act IV of 1947¹

THE WEST BENGAL DISTRICT SCHOOL BOARDS ACT, 1947.

AMENDED

{ West Ben. Act XXXIV of 1948.
West Ben. Act XV of 1949.

ADAPTED

The Adaptation of Laws Order,
1950.

[30th December, 1947.]

*An Act to provide for the dissolution and constitution of
certain district school boards.*

WHEREAS under the award of the Boundary Commission parts of the districts of Jalpaiguri, Malda, Nadia and Dinajpur have been excluded from the Province of West Bengal;

AND WHEREAS the new districts of ^{*}[Nadia], West Dinajpur, Malda and Jalpaiguri have been constituted comprising respectively the parts of the former districts of Nadia, Dinajpur, Malda and Jalpaiguri which have been included within West Bengal under the said award;

AND WHEREAS it is expedient to provide for the dissolution and constitution of certain District School Boards;

It is hereby enacted as follows:—

Short title
and com-
mence-
ment.

1. (1) This Act may be called the West Bengal District School Boards Act, 1947.

(2) It shall come into force on the date on which the West Bengal District School Boards Ordinance, 1947, ceases to operate.

West Ben.
Ord. XII
of 1947.

Definition.

2. In this Act, the expression "Boundary Commission" means the Boundary Commission referred to in the Indian Independence Act, 1947.

10 & 11,
Geo. VI,
c. 30.

Dissolu-
tion of
certain
district
school
boards.

3. Notwithstanding anything contained in the Bengal (Rural) Primary Education Act, 1930, or in any other law for the time being in force, on and from the date on which the award of the Boundary Commission came into force the District School Boards of the districts of Nadia, Dinajpur,

Ben. Act
VII of
1930.

¹For Statement of Objects and Reasons see the *Calcutta Gazette, Extraordinary*, dated the 20th November, 1947, Part IVA, page 313; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 26th November, 1947.

^{*}This word within square brackets was substituted for the word "Nawadwip" by the West Bengal District School Boards (Amendment) Act (West Ben. Act XXXIV of 1948).

[West Ben. Act

(Sections 4—5A.)

Malda and Jalpaiguri constituted under the said Act shall be deemed to have been dissolved and every member of each such board shall be deemed to have ceased to hold office as such member in so far as such boards had authority over any area included within West Bengal under the said award.

Constitu-
tion of
certain
district
school
boards.

4. (1) Notwithstanding anything contained in the Bengal (Rural) Primary Education Act, 1930, or in any other law for the time being in force, the ¹[State] Government may, by notification in the *Official Gazette*, constitute District School Boards of the districts of ²[Nadia], West Dinajpur, Malda and Jalpaiguri in such manner and consisting of such number of members as it may determine in this behalf. Ben. Act VII of 1930.

(2) The district school boards constituted under subsection (1) shall be deemed to have been constituted on and from the date on which the award of the Boundary Commission came into force.

Term of
office of
members.

5. The ¹[State] Government may, by notification in the *Official Gazette*, fix the term of office of members of the District School Boards constituted under section 4 for such period as the ¹[State] Government may think proper.

Reconsti-
tution of
certain
District
School
Boards in
accordance
with the
provisions
of Ben.
Act VII of
1930.

³5A. The ¹[State] Government may, if it so thinks fit, by notification in the *Official Gazette*, direct that on the expiration of the term of office of members of the District School Boards constituted under section 4, the said District School Boards shall be reconstituted in accordance with the provisions of the Bengal (Rural) Primary Education Act, 1930, and for the purpose of such reconstitution, the members of the said Boards shall be elected and appointed, before the expiry of the term of office of the members of the District School Boards constituted under section 4, in accordance with the provisions of the Bengal (Rural) Primary Education Act, 1930, and the rules framed thereunder and the persons, who ceased to hold their offices under section 3 shall not be deemed disqualified for such election or appointment if they are otherwise qualified therefor:

Provided that such of the provisions of the Bengal (Rural) Primary Education Act, 1930, as are specially applicable to the constitution of the District School Boards for the first or second term shall not apply.

¹This word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²See footnote 2 on p. 397, *ante*.

³This section was inserted by s. 2 of the West Bengal District School Boards (Amendment) Act, 1949 (West Ben. Act XV of 1949).

IV of 1947.]

(Sections 6, 7.)

6. Any regulations made or directions issued or anything done or any action taken or any suit instituted or any proceedings commenced by or against the District School Boards dissolved under section 3 in relation to the areas comprised in the districts of ¹[Nadia], West Dinajpur, Malda and Jalpaiguri before the publication of the notification constituting the District School Boards of the said districts under sub-section (1) of section 4 shall be deemed to have been made, issued, done, taken, instituted or commenced, as the case may be, by or against the respective District School Boards as so constituted as if such Boards had been constituted and were in existence at the time when such regulations were made, directions issued, thing done, action taken, suit instituted or proceedings commenced. **Savings.**

**West Ben.
Ord. XII
of 1947.**

7. Any notification issued or anything done or any action taken in exercise of any power conferred by the West Bengal District School Boards Ordinance, 1947, shall, on the said Ordinance ceasing to be in operation, be deemed to have been issued, done or taken in exercise of the powers conferred by this Act as if this Act had commenced on the 6th day of November, 1947. **Continu-
ance of
action
taken
under
West
Bengal
Ordinance
XII of
of 1947.**

¹See footnote 2 on p. 397, *ante*.

West Bengal Act V of 1947

THE WEST BENGAL PREMISES REQUISITION AND CONTROL (TEMPORARY PROVISIONS) ACT, 1947.

CHAPTER I.

PRELIMINARY.

Section.

1. Short title, commencement, extent and duration.
2. Definitions.

CHAPTER II.

REQUISITION OF PREMISES FOR ANY PUBLIC PURPOSE.

3. Power to requisition.
4. Power to order vacation of premises or for execution of repairs.
5. Easement, etc., not to be disturbed.
6. Disposal of premises after requisition.
7. Power to evict from requisitioned premises for breach of terms of tenancy.
8. Appeal.
9. Non-compliance with orders.
10. Release from requisition.

CHAPTER III.

PROVISIONS REGARDING COMPENSATION.

11. Procedure for fixing compensation.
12. Matters to be considered in fixing compensation by agreement.
13. Persons with whom agreement is to be entered into.
14. Deposit of compensation in case of dispute.

[CHAPTER IV.

Control of vacant premises.

- 15.
- 16.
17. *{(Repealed).}*
- 18.
- 19.

CHAPTER V.

MISCELLANEOUS.

20. Penalty.
21. Saving as to orders.
22. Protection of action taken under this Act.
23. Repeal and saving.
24. Power to make rules.

Bengal Act V of 1947¹

THE WEST BENGAL PREMISES REQUISITION AND CONTROL (TEMPORARY PROVISIONS) ACT, 1947.

AMENDED { West Ben. Act IV of 1949.
West Ben. Act XV of 1950.
West Ben. Act X of 1953.
West Ben. Act VII of 1954.

ADAPTED The Adaptation of Laws Order, 1950.

[1st January, 1948.]

An Act to provide for the requisition and control of premises in West Bengal.

WHEREAS it is expedient to provide for requisition and control of premises in West Bengal;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947. Short title, commencement, extent and duration.
- (2) It shall come into force on such date² as the State Government may, by notification in the *Official Gazette*,

Page 403—

In sub-section (4) of section 1, for the words "the 31st day of March, 1957", substitute the words "the 31st day of March, 1960".

(Substituted by West Ben. Act IX of 1957, section 2.)

[No. 1, dated the 14th February, 1958.]

Page 403—

In sub-section (4) of section 1, for the words "the 31st day of March, 1960", substitute the words "the 31st day of March, 1963". Bengal Pre-Ben. Ord. dated the 26th day of March, 1963.

(Substituted by West Ben. Act II of 1960, section 2.) "provincial" by

[No. 6, dated the 1st August, 1961.] by section 2 of the West Bengal Premises Requisition and Control (Temporary Provisions) (Amendment) Act, 1961.

¹THE WORDS "31st day of March, 1957" were substituted for the words "31st day of March, 1953" by section 2 of the West Bengal Premises Requisition and Control (Temporary Provisions) (Amendment) Act, 1953 (West Ben. Act X of 1953) and thereafter these words within square brackets were substituted for the words "the 31st day of March, 1954" by section 2 of the West Bengal Premises Requisition and Control (Temporary Provisions) (Amendment) Act, 1954 (West Ben. Act VII of 1954).

404 *The West Bengal Premises Requisition and Control
(Temporary Provisions) Act, 1947.*

[West Ben. Act

(Chapter I—Preliminary.—Section 2.)

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context—

(a) "Calcutta" has the same meaning as in clause (11) of section 3 of the Calcutta Municipal Act, 1923¹;

Ben.
Act III
of 1923.

²[(b) "Collector" means—

(i) in Calcutta, the First Land Acquisition Collector, and

(ii) elsewhere, the Collector of a district, and includes any other officer appointed by the State Government to discharge the functions of a Collector under this Act whether in Calcutta or elsewhere];

(c) "landlord" means any person who for the time being is receiving, or is entitled to receive, the rent of any premises whether on his own account, or on account or on behalf or for the benefit, of any other person, or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant and includes a legal representative, as defined in the Code of Civil Procedure, 1908, "[of the landlord];

Act V of
1908.

(d) "persons interested" means any person claiming an interest in compensation payable on account of requisition of any premises under this Act;

⁵(e) "premises" means any building or part of a building or any hut or part of a hut and includes the garden, grounds and out-houses (if any) appertaining to such building or part of a building or hut or part of a hut and also includes a room or rooms in an hotel, boarding house or lodging house;

(f) "prescribed" means prescribed by rules made under this Act;

¹ Calcutta Municipal Act, 1923 (Ben. Act III of 1923), was repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951).

²This clause (b) was substituted for the original clause by section 2(1) of the West Bengal Premises Requisition and Control (Temporary Provisions) Amendment Act, 1949 (West Ben. Act IV of 1949).

³See footnote 3 on page 403, *ante*.

⁴These words within square brackets were substituted for the words "a tenant who sublets any premises, and every person from time to time deriving title under a landlord" by section 2(2) of the West Bengal Premises Requisition and Control (Temporary Provisions) Amendment Act, 1949 (West Ben. Act IV of 1949).

⁵This clause (e) was substituted for the original clause by section 2(3), *ibid*.

The West Bengal Premises Requisition and Control 405
(Temporary Provisions) Act, 1947.

V of 1947.]

(Chapter II—Requisition of premises for any public purpose.—Section 3.)

¹(ff) “public purpose” does not include a purpose of the Union;

(g) “tenant” means any person by whom, or on whose account, rent is or but for a special contract would be, payable for any premises and includes a legal representative as defined in the Code of Civil Procedure, 1908, ²[of the tenant] and a person continuing in possession after the termination of a tenancy in his favour.

**Act V of
1908.**

CHAPTER II.

REQUISITION OF PREMISES FOR ANY PUBLIC PURPOSE.

3. (1) Whenever it appears to the State⁴ Government that any premises in any locality are needed or are likely to be needed for any public purpose, it may, by order in writing, requisition such premises ⁵[either with or without any or all of the furniture, if any, in such premises]:

**Power to
requisition.**

Provided that no premises exclusively used for the purpose of religious worship shall be requisitioned under this section.

⁶(2) An order under sub-section (1) shall be served in such manner as may be prescribed on the landlord, and where it relates to premises let out to a tenant, also on such tenant;

(3) The State⁴ Government may, with a view to requisitioning any premises under sub-section (1), by order,—

- (a) require any person to furnish to such authority as may be specified in the order, such information
- in his possession relating to the premises as may be so specified;

¹Clause (ff) was inserted by section 3 of the West Bengal Premises Requisition and Control (Temporary Provisions) (Amendment) Act, 1954 (West Ben. Act VII of 1954).

²These words within square brackets were inserted by section 2(4) of the West Bengal Premises Requisition and Control (Temporary Provisions) Amendment Act, 1949 (West Ben. Act IV of 1949).

³As to the validity of orders made under section 3, *vide* section 12, *ibid*.

⁴See footnote 3 on page 403, *ante*.

⁵These words within square brackets were inserted by section 3(1) of the West Bengal Premises Requisition and Control (Temporary Provisions) Amendment Act, 1949 (West Ben. Act IV of 1949).

⁶This sub-section (2) was substituted for the original sub-section (2) by section 3(2), *ibid*.

[West Ben. Act

(Chapter II—*Requisition of premises for any public purpose.*
—Section 4.)

¹(b) direct that until the expiry of such period not exceeding three months as may be specified in the order, the landlord, the tenant or any other person in occupation of the premises shall not let out the premises without the permission of the State Government or such other authority as may be specified in the order.

(4) An order passed under sub-section (1) shall be final and whenever such order has been passed, the ²State Government shall direct the Collector to take such further action as is necessary in connection with the requisitioning of the premises in accordance with the provisions of this Act ³[and to take possession of the premises requisitioned].

(5) Without prejudice to any other powers conferred by this Act, the Collector may authorise any person to enter and inspect any premises between sunrise and sunset for the purpose of determining whether, and if so in what manner, an order under this section should be made in relation to any premises or with a view to securing compliance with any order made under this Act.

(6) In connection with any inquiry under this Act the Collector may by written order require any person to produce for his inspection any documents relevant to the inquiry at such time and place, as may be specified in the order, and enforce the attendance of witnesses or compel the production of documents by the same means, and so far as may be, in the same manner as is provided in the case of a court by the Code of Civil Procedure, 1908.

Act V of
1908.

Power to
order vaca-
tion of
premises
or for exe-
cution of
repairs.

4. ⁴(1) Where any premises are requisitioned under this Act, the Collector may by notice in writing—

⁴[(a) order the person in occupation of the premises, if any, to vacate the premises within a period of ten days from the service of the notice;

(aa) order the landlord or the tenant, as the case may be, to remove the articles belonging to him, if any, and, where the premises are requisitioned

¹This clause (b) was substituted for the original clause (b) by section 4 of the West Bengal Premises Requisition and Control (Temporary Provisions) (Amendment) Act, 1954 (West Ben. Act VII of 1954).

²See footnote 3 on page 403, *ante*.

³These words within square brackets were added by section 3(4) of the West Bengal Premises Requisition and Control (Temporary Provisions) (Amendment) Act, 1949 (West Ben. Act IV of 1949).

⁴Existing section 4 was renumbered as sub-section (1) of that section and in sub-section (1) of that section as so renumbered, for clause (a), new clauses (a) and (aa) were substituted by section 4(1)(a), *ibid*.

V of 1947.]

*(Chapter II—Requisition of premises for any public purpose.
—Section 4.)*

without any furniture therein, such furniture, within a period of fifteen days from the service of the notice :

Provided that the Collector may, for reasons to be recorded in writing, extend the said period up to two months;]

(b) order the landlord to execute such repairs as may be specified in the notice within such time as may be specified therein;

(c) if a landlord fails to execute any repairs in pursuance of an order under clause (b) the Collector may cause the repairs specified in the order to be executed at the expense of the landlord and the cost thereof may, without prejudice to any other mode of recovery, be deducted from the compensation payable * * *.

²(2) Where any person fails to comply with an order under clause (aa) of sub-section (1), directing any furniture or other articles to be removed, the Collector may cause such furniture or other articles to be removed and to be stored or sold by public auction in such manner as the Collector may think fit at the cost and risk of such person :

Provided that no furniture, or other articles shall be sold by public auction in pursuance of the provisions of this sub-section without the previous sanction of the State³ Government or such other authority as may be empowered in this behalf by the State³ Government.

²(3) Where any furniture or other articles are removed and are stored or sold by public auction in pursuance of the provisions of sub-section (2), the cost of such removal and of such storage or sale, as the case may be, may, without prejudice to any other mode of recovery, be deducted from the compensation payable or from the sale proceeds, if any, and the balance of the sale proceeds, if any, after such deduction, shall be paid to the owner of such furniture or other articles, as the case may be :

Provided that if any dispute arises as to the person or persons to whom the amount of such balance or any part thereof is payable, the Collector shall keep the amount in revenue deposit till there has been a settlement of the dispute.

¹The words "to the landlord" were omitted by section 4(1)(b) of the West Bengal Premises Requisition and Control (Temporary Provisions) Amendment Act, 1949 (West Ben. Act IV of 1949).

²Sub-sections (2) and (3) were added by section 4(2), *ibid.*

³See footnote 3 on page 403, *ante.*

408 *The West Bengal Premises Requisition and Control
(Temporary Provisions) Act, 1947.*

[West Ben. Act

(Chapter II—*Requisition of premises for any public purpose.*
—Sections 5—7.)

Easement,
etc., not
to be dis-
turbed.

5. No landlord or any contractor, workman or servant employed by him shall without the previous written consent of the Collector or except for the purposes of effecting repairs or complying with a municipal requisition, wilfully disturb any convenience or easement attached to any premises requisitioned under this Act, or remove, destroy or render unserviceable anything provided for permanent use therewith or discontinue or cause to be discontinued any supply or service provided for the premises.

Disposal
of premises
after
requisi-
tion.

6. When ¹[any premises have been requisitioned under sub-section (1) of section 3, the State² Government] ³[may use or deal with them, for such public purpose and in such manner as may appear to it to be expedient].

Power to
evict from
requisi-
tioned
premises
for breach
of terms of
tenancy.

7. ⁴(1) Notwithstanding anything contained in any other law for the time being in force, where any person in occupation of any requisitioned premises—

- (a) uses the premises or allows the premises to be used wrongfully or in such manner as, in the opinion of the Collector, deteriorates or is likely to deteriorate the condition of the premises materially; or
- (b) sublets without due authority the whole or any part of the premises; or
- (c) fails or neglects to pay the rent or other sum payable by him for the occupation of the premises or for the use of any furniture therein; or
- (d) otherwise acts in contravention of any of the terms, express or implied, of his tenancy or other like relationship created by the ²State Government in respect of the premises,

¹These words, figures and brackets within square brackets were substituted for the words, figures and brackets "the Provincial Government has requisitioned any premises under sub-section (1) of section (3), it" by section 5 of the West Bengal Premises Requisition and Control (Temporary Provisions) Amendment Act, 1949 (West Ben. Act IV of 1949).

²See footnote 3 on page 403, *ante*.

³These words within square brackets were substituted for the words "may use or deal with it in such manner as may appear to it to be expedient" by section 5 of the West Bengal Premises Requisition and Control (Temporary Provisions) (Amendment) Act, 1954 (West Ben. Act VII of 1954).

⁴This sub-section (1) was substituted for the original sub-section by section 6 of the West Bengal Premises Requisition and Control (Temporary Provisions) Amendment Act, 1949 (West Ben. Act IV of 1949).

V of 1947.]

(Chapter II—Requisition of premises for any public purpose.—
Sections 8, 9.)

¹[the Collector may—

- (i) by notice served in the prescribed manner order such person or any other person found in occupation of the premises to vacate the premises within fourteen days of the service of the notice; and
- (ii) recover as a public demand, the rent or other sum referred to in clause (c), which rent or other sum is hereby declared to be a public demand, without prejudice to any other mode of recovery that may lie therefor.]

(2) Action may be taken under this section even if any proceedings for possession are pending in respect of the premises and upon such action being taken, the said proceedings shall forthwith be vacated.

8. Any person aggrieved by an order under section 7 may, within seven days of the receipt thereof, appeal in writing to the Commissioner of the Division who may, after calling for a report from the Collector and after making such further inquiry, if any, as he thinks fit, ²[and after giving such person an opportunity of being heard] pass an order determining the appeal. Appeal.

9. If any person fails to comply with an order made under ³[clause (a) of sub-section (1) of section 4] or under section 7, the Collector or any person authorised by him in writing in this behalf, shall execute the order in such manner as he considers expedient ⁴[and may,— Non-compliance with orders.

- (a) if he is a Magistrate, enforce the ⁵(delivery of possession) of the premises in respect of which the order has been made to himself, or

¹These words within square brackets were substituted for the words beginning with "the Collector may", and ending with "service of the notice" by section 6 of the West Bengal Premises Requisition and Control (Temporary Provisions) (Amendment) Act, 1954 (West Ben. Act VII of 1954).

²These words within square brackets were inserted by section 7, *ibid.*

³These words within square brackets were substituted for the words clause (a) of section 4" by section 8(1), *ibid.*

⁴These portions within square brackets were added by section 7 of the West Bengal Premises Requisition and Control (Temporary Provisions) Amendment Act, 1949 (West Ben. Act IV of 1949).

⁵These words within brackets were substituted for the word "surrender" by section 8(2) of the West Bengal Premises Requisition and Control (Temporary Provisions) (Amendment) Act, 1954 (West Ben. Act VII of 1954).

410 *The West Bengal Premises Requisition and Control
(Temporary Provisions) Act, 1947.*

[West Ben. Act

(Chapter II—Requisition of premises for any public purpose.—Chapter III—Provisions regarding compensation.—Sections 10, 11.)

- (b) if he is not a Magistrate, apply to a Magistrate, or, in Calcutta, to the Commissioner of Police, and such Magistrate or Commissioner, as the case may be, shall enforce the ¹(delivery of possession) of such premises to him.]

Release
from
requisition.

²10. (1) Where any premises are to be released from requisition made under this Act, the State Government shall, after such inquiry as it deems necessary to make or to cause to be made, specify by order in writing the person to whom delivery of possession of the premises shall be made.

(2) The delivery of possession of such premises to the person specified in the order made under sub-section (1) shall be a full discharge of the State Government from all liability of the State Government for any claim for compensation or other claim in respect of such premises for any period after the date of delivery but shall not prejudice any right in respect of such premises which any other person may be entitled by due process of law to enforce against the person to whom possession of the premises is so delivered.

(3) Where the person specified in the order made under sub-section (1) cannot be found or is not readily traceable or has no agent or other person empowered to accept delivery on his behalf, the State Government shall publish in the *Official Gazette* a notice declaring that such premises are released from requisition and shall cause a copy thereof to be affixed on some conspicuous part of such premises.

(4) When a notice referred to in sub-section (3) is published in the *Official Gazette*, the premises specified in such notice shall cease to be subject to requisition on and from the date of such publication and shall be deemed to have been delivered to the person specified in the order made under sub-section (1); and the State Government shall not be liable for any compensation or other claim in respect of such premises for any period after the said date.

CHAPTER III.

PROVISIONS REGARDING COMPENSATION.

Procedure
for fixing
compensation.

11. (1) Where any premises are requisitioned under this Act, there shall be paid to all persons interested compensation the amount of which shall be determined in the manner, and in accordance with the principles hereinafter set out, namely:—

- (a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;

¹These words within brackets were substituted for the word "surrender" by section 8(3) of the West Bengal Premises Requisition and Control (Temporary Provisions) (Amendment) Act, 1954 (West Ben. Act VII of 1954).

²Section 10 was substituted for the original section 10 by section 9, *ibid*.

*The West Bengal Premises Requisition and Control 411
(Temporary Provisions) Act, 1947.*

V of 1947.]

*(Chapter III—Provisions regarding compensation.—
Section 12.)*

- (b) where no such agreement can be reached, the State¹ Government shall appoint a District Judge or an Additional District Judge as arbitrator;
- (c) the State¹ Government may, in any particular case, nominate a person having expert knowledge as to the nature of the premises requisitioned, to assist the arbitrator, and where such nomination is made, the person to be compensated may also nominate an assessor for the said purpose;
- (d) at the commencement of the proceedings before the arbitrator, the State¹ Government and the person to be compensated shall state what in their respective opinions is a fair amount of compensation;
- ²(e) the arbitrator in making his award, shall have regard to the matters referred to in clauses (a), (b) and (c) of section 12;
- (f) an appeal shall lie to the High Court against an award of an arbitrator;
- (g) save as provided in this section and in any rules made under this Act, nothing in any law for the time being in force ³[, relating to arbitration,] shall apply to arbitrations under this section.

(2) Compensation shall also be paid in respect of any damage done to the premises during the period of requisition other than what may have been sustained by normal wear and tear or by natural causes. When the amount of such compensation can be fixed by agreement, it shall be paid in accordance with such agreement; where no such agreement can be reached, the matter shall be referred to the arbitrator.

12. * * In determining the amount of compensation which may be fixed by agreement under clause (a) of sub-section (1) of section 11, the Collector shall take into consideration—

Matters to be considered in fixing compensation by agreement.

- (a) the rent payable in respect of the premises ⁴[including, where the premises are requisitioned with any furniture therein, the charges for the use of such furniture];

¹See footnote 3 on page 403, *ante*.

²This clause (e) was substituted for the original clause (e) by section 10(1) of the West Bengal Premises Requisition and Control (Temporary Provisions) (Amendment) Act, 1954 (West Ben. Act VII of 1954).

³These words within square brackets were inserted by section 10(2), *ibid*.

⁴The figure and brackets "(1)" were omitted by section 8(1) of the West Bengal Premises Requisition and Control (Temporary Provisions) Amendment Act, 1949 (West Ben. Act IV of 1949).

⁵The words within square brackets were added by section 8(2), *ibid*.

**412 The West Bengal Premises Requisition and Control
(Temporary Provisions) Act, 1947.**

[West

(Chapter III—Provisions regarding compensation.—Chapter IV—Control of vacant premises.—Sections 13—19.)

- (b) If, in consequence of the requisition of the premises, the person interested is compelled to change his residence or place of business ¹[or to remove his furniture or other articles to any other place], the reasonable expenses (if any) incidental to such change ²[or removal]; and
- (c) the damage or loss of income (if any) sustained by the person interested between the date of service of the order under sub-section (1) or under clause (b) of sub-section (3) of section 3, as the case may be, on such person and the date when the Collector takes possession of the premises.

**Persons
with
whom
agreement
is to be
entered
into.**

13. The Collector shall enquire into the respective rights of all persons interested in the premises and shall decide whether the compensation shall be paid to any such person periodically or in lump. If the compensation is to be paid periodically the Collector shall, having regard to the terms and conditions under which ³[the premises may have been let out to a tenant], also decide whether the agreement for payment of compensation referred to in section 11 shall be entered into with such tenant or with the immediate landlord of such tenant.

**Deposit of
compensa-
tion in case
of dispute.**

14. When a dispute arises as to the person or persons to whom the amount of compensation or any part thereof is payable or as to the apportionment of the same or any part thereof, the Collector shall keep the amount in revenue deposit, till there has been a settlement of the dispute.

[CHAPTER IV.

Control of vacant premises.

15 to 19. *Repealed by section 11 of the West Bengal Premises Requisition and Control (Temporary Provisions) (Amendment) Act, 1954 (West Ben. Act VII of 1954).]*

¹These words within square brackets were inserted by section 8(3)(a) of the West Bengal Premises Requisition and Control (Temporary Provisions) Amendment Act, 1949 (West Ben. Act IV of 1949).

²These words within square brackets were inserted by section 8(3)(b), *ibid.*

³These words within square brackets were substituted for the words "a tenant may be in occupation of the premises" by section 9 of the West Bengal Premises Requisition and Control (Temporary Provisions) Amendment Act, 1949 (West Ben. Act IV of 1949).

The West Bengal Premises Requisition and Control 413
(Temporary Provisions) Act, 1947.

V of 1947.]

(Chapter V—Miscellaneous.—Sections 20—24.)

CHAPTER V.

MISCELLANEOUS.

20. (1) Whoever contravenes any provision of this Act, or fails or neglects to obey any order made thereunder shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees or with both. **Penalty.**

(2) No court shall take cognizance of any offence punishable under sub-section (1) except on the complaint in writing of the Collector.

21. (1) No order made in exercise of any power conferred by or under this Act shall be called in question in any Court. **Saving as to orders.**

(2) Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act, a Court shall presume, within the meaning of the Indian Evidence Act, 1872, that such order was so made by that authority. **I of 1872.**

22. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any order made thereunder. **Protection of action taken under this Act.**

(2) Save as is otherwise expressly provided in this Act no suit or other legal proceeding shall lie against the State¹ Government for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

23. (1) On the expiry of the West Bengal Premises (Requisition and Eviction) Ordinance, 1947, the provisions of section 8 of the Bengal General Clauses Act, 1899, shall apply as if it were an enactment then repealed by a West Bengal Act. **West Ben. Ord. X of 1947. Ben. Act I of 1899. Repeal and saving.**

(2) Any rules, orders and appointments made or anything done or any action taken or any proceedings commenced under any of the provisions of the said Ordinance shall continue in force in so far as they are consistent with this Act and shall be deemed to have been made, done, taken or commenced under the corresponding provision of this Act.

24. (1) The State¹ Government may make rules for carrying out the purposes of this Act. **Power to make rules.**

¹See footnote 3 on page 403, ante.

[West Ben. Act V of 1947.]

(Chapter V—Miscellaneous.—Section—24.)

In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

- (a) the manner of service of the orders referred to in sub-sections (2) and (3) of section 3;
- (b) the form and manner of service of notice referred to in section 4;
- (c) the form and manner of service of notice referred to in sub-section (1) of section 7;
- (d) the procedure to be followed in arbitrations and appeals under section 11, the period within which such appeals are to be filed, the principles to be followed in apportioning the costs of proceedings before the arbitrator and on appeal and the fees to be paid to experts and assessors appointed under that section;

¹Clauses (e) and (f) were omitted by section 12 of the West Bengal Premises Requisition and Control (Temporary Provisions) (Amendment) Act, 1954 (West Ben. Act VII of 1954).

West Bengal Act VI of 1947¹

THE WEST BENGAL DISTURBED AREAS ACT, 1947.

ADAPTED

The Adaptation of Laws Order, 1950.

[1st January, 1948.]

An Act to make better provision for the suppression of disorder and for the restoration and maintenance of public order in the disturbed areas in West Bengal.

WHEREAS it is expedient to make better provision for the suppression of disorder and for the restoration and maintenance of public order in the disturbed areas in West Bengal;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal Disturbed Areas Act, 1947. Short title and extent.

(2) It extends to the whole of West Bengal.

2. In this Act "disturbed area" means an area which is for the time being declared by notification under section 3 to be a disturbed area. Definition.

3. The ²[State] Government may, by notification in the *Official Gazette*, declare that the whole or any such part of West Bengal as may be specified in the notification is a disturbed area. Power to declare areas to be distributed areas.

4. Any Magistrate and any Police Officer not below the rank of Assistant Sub-Inspector may, if in his opinion it is necessary so to do for the maintenance of public order, after giving such warning, if any, as he may consider necessary, fire upon or otherwise use force against any person who is acting in contravention of any law or order for the time being in force in a disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons. Power to fire upon persons contravening certain orders.

5. No prosecution, suit or other legal proceedings shall be instituted, except with the previous sanction of the ²[State] Government, against any person in respect of anything done or purporting to be done in exercise of the powers conferred by section 4. Protection of persons acting under section 4.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 21st November, 1947, Part IV, page 331; for proceedings in the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 27th November 1947.

²This word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

[West Ben. Act VI of 1947.]

(Section 6.)

Continu-
ance of
action
taken un-
der Bengal
Ordinance
VII of
1947.

6. Any notification issued or anything done or any action taken in exercise of the powers conferred by the Bengal Disturbed Areas Ordinance, 1947, shall, on the said Ordinance ceasing to be in operation, be deemed to have been issued, done or taken in exercise of the powers conferred by this Act as if this Act had commenced on the 5th day of August, 1947.

Ben. Ord.
VII of
1947.

West Bengal Act VII of 1947¹

THE WEST BENGAL CRIMINAL LAW AMENDMENT ACT, 1947.

ADAPTED

The Adaptation of Laws Order, 1950.

[1st January, 1948.]

An Act to provide for the more speedy trial and more effective punishment of certain offences.

WHEREAS it is expedient to provide for the more speedy trial and more effective punishment of certain offences;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal Criminal Law Amendment Act, 1947.

Short
title and
commence-
ment.

West
Ben. Ord.
IX of
1947.

(2) It shall come into force on the date on which the West Bengal Criminal Law Amendment (No. II) Ordinance, 1947, ceases to operate.

2. The ²[State] Government may, by notification in the *Official Gazette*, constitute for the purposes of this Act a Special Tribunal or Tribunals to sit at such place or places as may be specified in the notification:

Constitu-
tion of
Special
Tribunal
or
Tribunals.

Provided that any Special Tribunal may, if it is satisfied that it will tend to the general convenience of parties or witnesses in any particular case, sit for the trial of that case in a place other than the place specified for it.

3. (1) A Special Tribunal constituted under this Act shall consist of three members, each of whom shall be a person who—

Composi-
tion of
Special
Tribunals.

26 Geo. V,
c. 2.

(a) is qualified under ³[clause (2) of article 217 of the Constitution] for appointment as a Judge of a High Court, or

Act V of
1898.

(b) has, or has exercised, the powers under the Code of Criminal Procedure, 1898, of any one or more of the following, namely, Sessions Judge, Additional Sessions Judge, Chief Presidency Magistrate,

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 17th November, 1947, Part IV, page 263; the Report of the Select Committee was presented to the West Bengal Legislative Assembly on the 8th December, 1947; for proceedings of the West Bengal Legislative Assembly, see the proceedings of the meetings of the West Bengal Legislative Assembly held on the 25th November, 8th and 11th December, 1947.

²These words within square brackets were substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³These words and figures within square brackets were substituted for the words and figures "sub-section (3) of section 220 of the Government of India Act, 1935," by paragraph 3 of, and the Eleventh Schedule to, *ibid.*

(Sections 4, 5.)

Additional Chief Presidency Magistrate, Presidency Magistrate, District Magistrate, Additional District Magistrate,—

and at least one shall have the qualification specified in clause (a).

(2) The ¹[State] Government shall appoint one of the members to be the President of the Special Tribunal.

Triable by
Special
Tribunals.

4. ((1) The ¹[State] Government may, from time to time by notification in the *Official Gazette*, allot cases for trial to each Special Tribunal, and may also from time to time by like notification transfer any case from one Special Tribunal to another or withdraw any case from the jurisdiction of a Special Tribunal or make such modifications in the description of a case (whether in the names of the accused or in the charges preferred or in any other manner) as may be considered necessary.

(2) The Special Tribunals shall have jurisdiction to try the cases for the time being respectively allotted to them under sub-section (1) in respect of such of the charges for offences specified in the Schedule as may be preferred against the several accused and any such case which is at the commencement of this Act or at the time of such allotment pending before any Court or another Special Tribunal shall be deemed to be transferred to the Special Tribunal to which it is so allotted.

(3) When trying any such case as aforesaid, a Special Tribunal may also try any offence whether or not specified in the Schedule which is an offence with which the accused may, under the Code of Criminal Procedure, 1898, be charged at the same trial.

Act V
of 1898.

Procedure
and
powers
of Special
Tribunals.

5. (1) A Special Tribunal may take cognizance of offences without the accused being committed to it for trial, and in trying accused persons shall follow the procedure prescribed by the Code of Criminal Procedure, 1898, for the trial of warrant cases by Magistrates:

Provided that a Special Tribunal may, for reasons to be recorded in writing, refuse to summon any witness if satisfied after examination of the accused that the evidence of such witness will not be material, and shall not be bound to adjourn any trial for any purpose, unless such adjournment is in its opinion necessary in the interests of justice:

Provided further that for the purposes of sub-section (1) of section 356 of the said Code English shall be deemed to be the language of the Court and the Tribunal may decide by which one, if any, of its members the evidence of any

¹See footnote 2 on page 417, ante.

of 1947.]

(Sections 6, 7.)

or all of the witnesses shall be taken down in writing, and where under the provisions of that sub-section the evidence of witnesses is taken down under the direction and superintendence of the Tribunal but not by a member thereof, the provisions of sub-section (3) of section 356 shall not apply.

(2) Notwithstanding anything contained in section 3, any two members of a Special Tribunal may proceed with the trial of a case during the temporary and unavoidable absence of the third member:

Provided that all three members shall be present when after the evidence has been concluded the prosecutor or the accused or his pleader is addressing the Special Tribunal and when the judgment in the case is delivered.

Act V
of 1898.

(3) Save as provided in sub-section (1) the provisions of the Code of Criminal Procedure, 1898, except the provisions of section 196A and of Chapter XXXIII, shall, so far as they are not inconsistent with this Act, apply to proceedings of a Special Tribunal; and for the purposes of the said provisions the Special Tribunal shall be deemed to be a Court of Sessions, trying cases without a jury, and a person conducting a prosecution before a Special Tribunal shall be deemed to be a Public Prosecutor.

(4) A Special Tribunal shall not, merely by reason of a change in its members, be bound to recall and rehear any witness who has given evidence, and it may act on the evidence already recorded by or produced before it.

(5) In the event of any difference of opinion among the members of a Special Tribunal the opinion of the majority shall prevail.

(6) A Special Tribunal may pass any sentence authorised by law.

6. The High Court may, subject to the provisions of section 7 regarding the transfer of cases, exercise, so far as they may be applicable all the powers conferred by Chapters XXXI and XXXII of the Code of Criminal Procedure, 1898, on a High Court, as if the Special Tribunal were a Court of Session trying cases without a jury within the local limits of the High Court's jurisdiction. Appeal and revision.

7. No Court shall have authority to transfer any case from a Special Tribunal, or, save as provided in section 6, have any jurisdiction of any kind in respect of any proceedings of a Special Tribunal. Bar of certain jurisdiction.

(Sections 8, 9.)

Special
rules of
evidence.

8. When any person is charged before a Special Tribunal with an offence specified in the Schedule, the fact that such person is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, or that such person has, at or about the time of the offence with which he is charged, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken into consideration by the Special Tribunal as a relevant fact in deciding whether he is or is not guilty of the particular offence with which he is charged.

Special
provisions
regarding
punish-
ment.

9. (1) When any person charged before a Special Tribunal with an offence specified in the Schedule is found guilty of that offence, the Special Tribunal shall, notwithstanding anything contained in the Indian Penal Code, whether or not it imposes a sentence of imprisonment, impose, in addition to such sentence of fine, if any, as it would otherwise have imposed, a further sentence of fine which shall be equivalent to the amount of money or value of other property found to have been procured by the offender by means of the offence.

Act XLV
of 1860.

(2) Except where the offence of which the person is found guilty is an offence specified in item 1 or item 5 of the Schedule, when it appears that the offence has caused loss to more than one Government referred to in the Schedule or local authority, the Special Tribunal shall in its order of conviction record a finding indicating the amount of loss sustained by each such Government or local authority.

(3) When a person is found guilty at the same trial of one or more offences specified in item 1 or item 5 of the Schedule and of one or more offences specified in any of the other items of the Schedule, the Special Tribunal shall in its order of conviction record a finding indicating separately the amounts procured by means of the two classes of offences.

(4) Where an additional fine is imposed under sub-section (1) for an offence, it shall, after deduction of the cost of recovery as determined by the District Magistrate or, in the Presidency-town of Calcutta by the Chief Presidency Magistrate, be credited to the Government (being a Government referred to in the Schedule) or local authority to which the offence has caused loss, or where there is more than one such Government or local authority, be distributed among them in proportion to the loss sustained by each:

Provided that the provisions of this sub-section shall not apply in respect of any additional fine imposed for an offence specified in item 1 or item 5 of the Schedule, or in a case of the nature referred to in sub-section (3), in respect of such

of 1947.]

(Sections 10—13.)

portion of the additional fine as is equivalent to the amount found under that sub-section to have been procured by means of offences specified in those items.

(5) Where in any appeal or revisional proceedings against an order of acquittal passed by a Special Tribunal the Appellate Court convicts the accused, the Appellate Court shall in passing sentence impose an additional fine as provided in sub-section (1), and shall where necessary record a finding referred to in sub-section (2) or sub-section (3).

**Ord.
XXXVIII
of 1944.**

(6) Nothing in this section shall apply to any case to which the provisions of section 12 of the Criminal Law Amendment Ordinance, 1944, apply.

10. The ¹[State] Government may make rules providing for— Power to make rules.

- (a) the time at which the Special Tribunal or Tribunals may sit;
- (b) the procedure to be adopted in the event of any member of the Special Tribunal being prevented from attending throughout the trial of any accused person; and
- (c) the inspection and grant of copies of records of Special Tribunal or Tribunals and the fees for such inspection and grant.

11. The provisions of the Prevention of Corruption Act, **II of 1947.** 1947, shall apply to trials under this Act. Application of Act II of 1947 to trials under this Act.

12. No suit, prosecution or legal proceedings whatever shall lie against any person in respect of anything which is, in good faith, done or intended to be done under this Act. Indemnity.

**West
Ben.
Ord. IX
of 1947.**

13. Any rules made or anything done or any action taken or any proceedings commenced in exercise of any power conferred by or under the West Bengal Criminal Law Amendment (No. II) Ordinance, 1947, shall, on the said Ordinance ceasing to be in operation, be deemed to have been made, done, taken or commenced in exercise of powers conferred by or under this Act as if this Act had commenced on the 9th day of October, 1947. Continuance of action taken under West Bengal Ordinance IX of 1947.

¹See footnote 2 on page 417, *ante*.

[West Ben. Act VII of 1947.]

(The Schedule.)

THE SCHEDULE.

[See section 4(2).]

Offences triable by Special Tribunals.

1. An offence punishable under section 161 or section 165 of the Indian Penal Code or any conspiracy to commit or any attempt to commit or any abetment of such offence. Act
XLV
of 1860.

2. An offence punishable under section 406 or section 408 or section 409 of the Indian Penal Code, where the property in respect of which the offence is committed is property entrusted by His Majesty's Government in the United Kingdom or in any part of His Majesty's dominions or the Central or a ¹[State] Government or a department of any such Government or a local authority or a person acting on behalf of any such Government or department or authority.

3. An offence punishable under section 411 or section 414 of the Indian Penal Code, where the stolen property in respect of which the offence is committed is property such as is described in the preceding item and in respect of which an offence punishable under section 406 or section 408 or section 409 of the said Code has been committed.

4. An offence punishable under section 417 or section 420 of the Indian Penal Code, where the person deceived is His Majesty's Government in the United Kingdom or in any part of His Majesty's dominions or the Central or a ¹[State] Government or a department of any such Government or a local authority or a person acting on behalf of any such Government or department or authority.

5. An offence punishable under any order made or deemed to be made under the Essential Supplies (Temporary Powers) Act, 1946, or any conspiracy to commit or any attempt to commit or any abetment of such offence. XXIV of
1946.

6. An offence punishable under section 5 of the Prevention of Corruption Act, 1947. II of 1947.

7. Any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in items 2, 3 and 4.

¹The word within square brackets was substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

West Bengal Act IX of 1947¹

THE BENGAL LOCAL SELF-GOVERNMENT (WEST BENGAL AMENDMENT) ACT, 1947.

ADAPTED The Adaptation of Laws Order, 1950.

[5th January, 1948.]

An Act further to amend the Bengal Local Self-Government Act of 1885.

Ben. Act
III of
1885.

WHEREAS it is expedient further to amend the Bengal Local Self-Government Act of 1885 for the purposes and in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. This Act may be called the Bengal Local Self-Government (West Bengal Amendment) Act ²[of] 1947. Short-
title.

2—9. [*Amendments incorporated in the principal Act.*]

10. Notwithstanding anything contained in the Bengal Local Self-Government Act of 1885— Transi-
tory pro-

(a) all the members of a district board appointed before the commencement of this Act under section 7 or section 131 of the Act shall, on the commencement of this Act, vacate their offices and the elected members of the board shall be deemed to constitute the board and the commencement of the term of their office shall be deemed to be the date on which they came into office under section 19A of the Act;

the Vice-Chairman of the district board, unless he is exercising the powers of the Chairman in his absence, shall also vacate his office as Vice-Chairman on the commencement of ³[the] Act:

Provided that the existing Chairman or a Vice-Chairman, if he is exercising the powers of the Chairman in his absence, shall continue in office till a new Chairman is elected or appointed under the provisions of clause (b) or (c) of this section or under section 22 or section 23A of the Act, as the case may be;

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 26th November, 1947, Part IV, page 356; for proceedings of the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 8th December, 1947.

²Sic delete "of"—clerical error.

³Sic for "the" read "this"—clerical error.

[West Ben. Act IX of 1947.]

(Section 10.)

(b) a fresh election of the Chairman and Vice-Chairman of the district board from among the elected members shall be held after the commencement of this Act. The District Magistrate shall within a month from the commencement of this Act or such further time as may be allowed by the ¹[State] Government convene a meeting of the elected members for the purpose of electing a Chairman. Seven days' clear notice shall be given of the meeting:

Provided that there shall be no fresh election of the Chairman and the Vice-Chairman under this clause if within a period of fifteen days from the date of commencement of ²[the] Act the names of the elected members of the board as a result of a general election held for reconstitution of the board are published in the *Official Gazette*;

(c) if the elected members fail to elect a Chairman within the time prescribed in clause (b), the ¹[State] Government shall appoint by name one of the elected members to be the Chairman;

(d) the number of members of a board shall be deemed to be the total number of elected seats on the board fixed by the existing orders of the ¹[State] Government until the number is altered by the ¹[State] Government.

¹The word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²Sic for "the" read "this"—clerical error.

West Bengal Act X of 1947¹

THE BENGAL VILLAGE SELF-GOVERNMENT (WEST BENGAL AMENDMENT) ACT, 1947.

ADAPTED The Adaptation of Laws Order, 1950.

[5th January, 1948.]

An Act further to amend the Bengal Village Self-Government Act, 1919.

Ben. Act
V of 1919.

WHEREAS it is expedient further to amend the Bengal Village Self-Government Act, 1919, for the purposes and in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. ²[The] Act may be called the Bengal Village Self-Government (West Bengal Amendment) Act, 1947. Short title.

2—8. [*Amendments incorporated in the principal Act.*]

9. Notwithstanding anything contained in the Bengal Village Self-Government Act, 1919— Transitory provisions.

(a) all the members of a Union Board appointed before the commencement of this Act under sub-section (3) of section 6 or sub-section (2) of section 57 shall, on the commencement of this Act, vacate their offices and the elected members of the board shall be deemed to constitute the board and the commencement of the term of their office shall be deemed to be the date on which they came into office under the provisions of section 11 of the Act;

the Vice-President of the Union Board, if any, unless he is exercising the powers of the President in his absence shall also vacate his office as Vice-President on the commencement of this Act:

Provided that the existing President or Vice-President of the Union Board if he is exercising the powers of the President in his absence shall continue in office till a new President is elected or appointed under the provisions of clause (b) or (c) of this section or under section 8 of the Act, as the case may be;

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 26th November, 1947, Part IV, page 354; for proceedings of the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 8th December, 1947.

²*Sic* for "the" read "this"—clerical error.

[West Ben. Act X of 1947.]

(Section 9.)

- (b) a fresh election of the President and Vice-President, if any, of the Union Board from among the elected members shall be held after the commencement of this Act. The District Magistrate shall within a month from the commencement of this Act or such further time as may be allowed by the ¹[State] Government issue an order on the Circle Officer or such other person (not being one of the members) as the said Magistrate may select directing him to convene a meeting of the elected members for the purpose of electing a President from among them within one month from the date of the order;

Provided that there shall be no fresh election of the President and Vice-President under this clause, if within a period of fifteen days from the date of the commencement of this Act, the names of the elected members of the board as a result of a general election held for reconstitution of the board are published in the *Official Gazette*;

- (c) if the elected members of the Union Board fail to elect a President within the time prescribed in clause (b), the District Board shall appoint an elected member of the Union Board to be the President; and
- (d) the number of members of a Union Board shall be deemed to be the total number of elected seats on the board fixed by the existing orders of the ¹[State] Government until the number is altered by the ¹[State] Government.

¹The word within square brackets was substituted for the word " Provincial " by paragraph 4(1) of the Adaptation of Laws Order, 1950.

West Bengal Act XI of 1947¹

THE BENGAL MUNICIPAL (WEST BENGAL AMENDMENT) ACT, 1947.

ADAPTED The Adaptation of Laws Order, 1950.

[5th January, 1948.]

An Act further to amend the Bengal Municipal Act, 1932.

Ben. Act
KV of
1932.

WHEREAS it is expedient further to amend the Bengal Municipal Act, 1932, for the purposes and in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. This Act may be called the Bengal Municipal (West Bengal Amendment) Act, 1947. Short title.

2—12. [*Amendments incorporated in the principal Act.*]

Ben. Act
XV of
1932.

13. Notwithstanding anything contained in the Bengal Municipal Act, 1932—

Transi-
tory pro-
visions.

(a) all the Commissioners of a municipality appointed before the commencement of this Act under section 16 except those appointed under proviso (2) to section 16 or under section 17 or under clause (ii) of sub-section (2) of section 554 of the Act shall, on the commencement of ²[the] Act, vacate their offices and the Commissioners of the Municipality shall be deemed to be constituted of the elected Commissioners only and the commencement of their term of office shall be deemed to be the date on which they came into office under the provision of section 56 of the Act;

the Vice-Chairman of the Municipality, unless he is exercising the powers of the Chairman in his absence, shall also vacate his office as Vice-Chairman on the commencement of this Act:

Provided that the existing Chairman or the Vice-Chairman, if he is exercising the powers of the Chairman in his absence, shall continue in office till a new Chairman is elected or appointed under the provisions of clause (b) or (c) of this section or under section 45 or section 46 of the Act, as the case may be;

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 26th November, 1947, Part IV, page 357; for proceedings of the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 8th December, 1947.

²Sic for "the" read "this"—clerical error.

[West Ben. Act XI of 1947.]

(Section 13.)

- (b) a fresh election of the Chairman and the Vice-Chairman of the Municipality from among the elected Commissioners shall be held after the commencement of this Act. The District Magistrate shall within a month from the commencement of this Act or such further time as may be allowed by the ¹[State] Government convene a meeting of the elected Commissioners for the purpose of electing a Chairman. Seven days' clear notice shall be given of the meeting:

Provided that there shall be no fresh election of Chairman and Vice-Chairman under this clause if within a period of fifteen days from the date of the commencement of this Act, the names of the elected Commissioners of the Municipality as a result of a general election held for reconstitution of the Commissioners are published in the *Official Gazette*;

- (c) if the elected Commissioners fail to elect a Chairman within the time prescribed in clause (b), the ¹[State] Government shall appoint by name one of the elected Commissioners to be the Chairman;
- (d) the number of Commissioners of the Municipality shall be deemed to be the total number of elected seats on the Municipality fixed by the existing orders of the ¹[State] Government until the number is altered by the ¹[State] Government.

¹The word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

West Bengal Act II of 1948

THE WEST BENGAL LAND (REQUISITION AND ACQUISITION) ACT, 1948.¹

AMENDED { West Ben. Act VII of 1951.
West Ben. Act VIII of 1954.
West Ben. Act XXV of 1956.

ADAPTED The Adaptation of Laws Order,
1950.

[11th March, 1948.]

An Act to provide for the requisition and speedy acquisition of land for certain purposes.

WHEREAS it is expedient to provide for the requisition and speedy acquisition of land for the purposes of maintaining supplies and services essential to the life of the community and for providing transport trans-

Page 429—

In sub-section (4) of section 1, for the words "the 31st day of March, 1957" substitute the words "the 31st day of March, 1962".

(Substituted by West Ben. Act XII of 1957, section 2.)

[No. 1, dated the 15th February, 1958.]

— force up to ²[the 31st day of March, 1957].

Short title
extent,
commence-
ment and
duration.

2. In this Act unless there is anything repugnant in the subject or context,—

³(a) "Collector" means the Collector of a district and includes a Deputy Commissioner and any officer specially appointed by the State Government to perform the functions of a Collector under this Act;

• (b) "Court" means a principal Civil Court of original jurisdiction, and includes the Court of any Additional Judge, Subordinate Judge or Munsif

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 11th February, 1948, Part IV, page 188; for the Proceedings of the West Bengal Legislative Assembly, see the Proceedings of the West Bengal Legislative Assembly, held on the 18th and the 19th February, 1948.

²The words and figures "31st day of March, 1954" were originally substituted for the words and figures "31st day of March, 1951" by s. 2 of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1951 (West Ben. Act VII of 1951), and thereafter these words within square brackets were substituted for the words "the 31st day of March, 1954" by s. 2 of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1954 (West Ben. Act VIII of 1954).

³This clause (a) was substituted for the original clause (a) by s. 3(1) of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1954 (West Ben. Act VIII of 1954).

430 The West Bengal Land (Requisition and Acquisition) Act, 1948.

[West Ben. Act

(Section 3.)

whom the ¹[State] Government may appoint, by name or by virtue of his office, to perform, concurrently with any such principal Civil Court, all or any of the functions of the Court under this Act within any specified local limits and, in the case of a Munsif, up to the limits of the pecuniary jurisdiction with which he is vested under section 19 of the Bengal, Agra and Assam Civil Courts Act, 1887;²

XII of 1887.

³(b1) 'land' has the same meaning as in the Land Acquisition Act, 1894;

³(b2) the expression 'person interested' includes all persons claiming an interest in compensation to be paid on account of the requisition or acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land; and

(c) "prescribed" means prescribed by rules made under this Act.

Power to requisition-

3. (1) If in the opinion of the ¹[State] Government or any person authorised in this behalf by the ¹[State] Government it is necessary so to do for maintaining supplies

e 430-

In sub-section (1) of section 3, after the words "for providing proper facilities for transport, communication, irrigation or drainage," insert the words "or for the creation of better living conditions in rural or urban areas, not being an area under the administration of the Corporation of Calcutta or an industrial or other area excluded by the State Government by a notification in this behalf by the construction or re-construction of dwelling places for people residing in such areas,".

ty or for
munication,
rent or the
by order in
ich further
r expedient

of religious
on.

(Inserted by West Ben. Act XII of 1957, section 3.)

[No. 1, dated the 15th February, 1958.]
being the owner or

served in
ad and where
occupier, not
pier].

¹The word "State" within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²The word "and" was omitted by s. 3(2) of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1954 (West Ben. Act VIII of 1954).

³Clauses (b1) and (b2) were inserted by s. 3(3), *ibid*.

⁴These words within square brackets were substituted for the words "of a tenant also on such tenant" by s. 4(1) of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1954 (West Ben. Act VIII of 1954).

The West Bengal Land (Requisition and Acquisition) Act, 1948.

II of 1948.]

(Section 4.)

¹(3) If any person fails to comply with an order made under sub-section (1), the Collector or any person authorised by him in writing in this behalf shall execute the order in such manner as he considers expedient and may,—

(a) if he is a Magistrate, enforce the delivery of possession of the land in respect of which the order has been made to himself, or

(b) if he is not a Magistrate, apply to a Magistrate or, in Calcutta as defined in clause (II) of section 5 of the Calcutta Municipal Act, 1951, to the Commissioner of Police, and such Magistrate or Commissioner, as the case may be, shall enforce the delivery of possession of such land to him.

**West Ben.
Act
XXXIII
of 1951.**

4. ²(1) Where any land has been requisitioned under section 3, the State Government may use or deal with such land for any of the purposes referred to in sub-section (1) of section 3 as may appear to it to be expedient. **Acquisition of land.**

³(1a) The State Government may acquire any land requisitioned under section 3 by publishing a notice in the *Official Gazette* that such land is required for a public purpose referred to in sub-section (1) of section 3.

(2) Where a notice as aforesaid is published in the *Official Gazette*, the requisitioned land shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the '[State] Government free from all incumbrances and the period of requisition of such land shall end.

5. (1) After the publication of a notice under ⁴[sub-section (1a) of section 4], the Collector shall cause public notice to be given at convenient places on or near the land '[acquired]', stating that the '[State] Government has acquired the land, and that claims to compensation for all interests in such land may be made to him.'

Notice to persons interested.

(2) '[Such public notice] shall state the particulars of the land so acquired, and shall require all persons interested in the land to appear personally or by agent before the

¹Sub-section (3) was added by s. 4 (2) of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1954 (West Ben. Act VIII of 1954).

²This sub-section (1) was substituted for the original sub-section (1) by s. 5(1), *ibid*.

³Sub-section (1a) was inserted by s. 5(2), *ibid*.

⁴See footnote 1 on page 430, *ante*.

⁵These words within square brackets were substituted for the words "sub-section (1) of section 4" by s. 6(1)(i) of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1954 (West Ben. Act VIII of 1954).

⁶This word within square brackets was substituted for the words "to be taken" by s. 6(1) (ii), *ibid*.

⁷These words within square brackets were substituted for the words "Such notice" by s. 6(2), *ibid*.

[West Ben Act

(Sections 5A, 6.)

Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice in the manner prescribed on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by registered post in a letter addressed to him at his last known residence, address or place of business.

**Exclusion
of mines,
etc.**

5A. In making an order under sub-section (1) of section 3 or in publishing a notice under sub-section (1a) of section 4, the State Government may mention in the order or the notice that mines of coal, iron-stone, slate or other minerals lying under the land or any particular portion of the land are not needed and thereupon reference to the land shall be construed as excluding such mines or minerals.

**Release
from
requisition.**

6. (1) Where any land requisitioned under section 3 is not acquired and is to be released from requisition, the ¹[State] Government may, after making such inquiry, if any, as it considers necessary, specify by order in writing the person who appears to it to be entitled to the possession of such land.

(2) The delivery of possession of such land to the person specified in the order made under sub-section (1) shall be a full discharge of any liability of the ²[State] Government ³[for any claim for compensation or other claim in respect of such land for any period after the date of delivery] but shall not prejudice any right in respect of such land which any other person may be entitled by due process of law to enforce against the person to whom possession of the land is so delivered.

¹This section was inserted by 2 of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1956 (West Ben. Act XXV of 1956).

²See footnote 1 on p. 430, *ante*.

³These words within square brackets were substituted for the words "to deliver possession to such person as may have rightful claim to possession thereof" by s. 7(1) of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1954 (West Ben. Act VIII of 1954).

II of 1948.]

(Section 7.)

(3) Where the person ¹[specified in the order made under sub-section (1)] cannot be found or is not readily traceable or has no agent or other person empowered to accept delivery on his behalf, the ²[State] Government shall publish in the *Official Gazette* a notice declaring that such land is released from requisition and shall cause a copy thereof to be affixed on some conspicuous part of such land.

(4) When a notice referred to in sub-section (3) is published in the *Official Gazette*, the land specified in such notice shall cease to be subject to requisition on and from the date of such publication and shall be deemed to have been delivered to the person ³[specified in the order made under sub-section (1)]; and the ²[State] Government shall not be liable for any compensation or other claims in respect of such land for any period after the said date.

7. (1) Wherever any land is acquired under section 4 there shall be paid ⁴[to every person interested] compensation the amount of which shall be determined by the Collector in the manner and in accordance with the principles set out in sub-section (1) of section 23 of the Land Acquisition Act, 1894 ⁵[, so far as they may be applicable]:

Compensation.

I of 1894.

Provided that the market value referred to in clause first of sub-section (1) of section 23 of the said Act shall, in respect of any land acquired under this Act, be deemed to be the market value of such land on the date of publication of the notice referred to in ⁶[sub-section (1a) of section 4].

* * * * *

¹These words within square brackets were substituted for the words "to whom the possession of any land requisitioned under section 3 is to be delivered" by s. 7(2) of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1954 (West Ben. Act VIII of 1954).

²See foot-note 1 on page 430, *ante*.

³These words within square brackets were substituted for the words "entitled to possession thereof" by s. 7(3), *ibid*.

⁴These words within square brackets were inserted by s. 8(1), *ibid*.

⁵These words within square brackets were added by s. 3 of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1951 (West Ben. Act VII of 1951).

⁶These words within square brackets were substituted for the words "sub-section (1) of section 4" by s. 8(2) of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1954 (West Ben. Act VIII of 1954).

⁷The second proviso to sub-section (1) was omitted by s. 8(3), *ibid*.

434 The West Bengal Land (Requisition and Acquisition) Act, 1948.

[West Ben. Act

(Section 7.)

Page 434—

After clause (a) of sub-section (2) of section 7, insert the following clause, namely :—

“(aa) (i) Such award shall be filed in the Collector’s office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested in the land, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested ;

(ii) the Collector shall give in the prescribed manner immediate notice of his award to such of the persons interested in the land as are not present personally or by their representatives when the award is made.”.

(Inserted by West Ben. Act XII of 1957, section 4.)

[No. 1, dated the 15th February, 1958.]
respect of—

(a) the requisition of such land ; and

(b) any damage done during the period of requisition to such land other than what may have been sustained by natural causes.

“(4) The principle to be followed in determining compensation under sub-section (3) shall be as follows, namely :—

(i) where the Collector and the person interested agree as to the compensation, the Collector shall make an award ordering payment of the agreed compensation ;

(ii) where the person interested cannot be traced or does not appear before the Collector when called upon to be present for the purpose of the determination of the compensation, such amount shall be determined as compensation as appears reasonable to the Collector having regard to the facts and circumstances of the case and the Collector shall make an award ordering payment of the compensation so determined ;

¹The original sub-section (2) was renumbered as clause (a) of sub-section (2) and to that clause as so renumbered the proviso was added by s. 8(4)(i), *ibid.*

²Clause (b) was inserted by s. 8(4) (ii), *ibid.*

³This word within square brackets was substituted for the words “such compensation as may be agreed upon in writing between such person and the Collector” by s. 8(5) of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1954 (West Ben. Act VIII of 1954).

⁴Sub-section (4) was added by s. 8(5), *ibid.*

ed
in
he
in I of 1894.
ed

im
rd
ib-
in

the
ith
ion

ere
in

*The West Bengal Land (Requisition and Acquisition) 435
Act, 1948.*

11 of 1948.]

(Sections 8, 9.)

- (iii) where there is any disagreement between the Collector and the person interested, the compensation payable shall be the amount determined by the Court on reference made by the Collector under clause (b) of sub-section (1) of section 8.

8. (1) The Collector shall in every case—

Reference
to Court.

- (a) where ¹[any person interested being aggrieved by an award made under sub-section (2) of section 7 or clause (ii) of sub-section (4) of that section] makes an application requiring the matter to be referred to the Court; or

- (b) where there is any disagreement with regard to the compensation payable under sub-section (3) of section 7 between the Collector ²[and any person interested in compensation]

Page 435—

To sub-section (2) of section 8, add the following *Explanation*,
namely : —

“Explanation.—The notice given under sub-clause (ii) of clause (aa) of sub-section (2) of section 7 shall be deemed to be the notice under sub-section (2) of section 12 of the Land Acquisition Act, 1894 for the purposes I of 1894. of the proviso to section 18 thereof.”

(Added by West Ben. Act XII of 1957, section 5.)

[No. 1, dated the 15th February, 1958.]

Power to
enter upon
land, etc.

- (a) require any person to furnish to such authority as may be specified in the order such information in his possession relating to the ³[land] as may be specified;

⁴ 6*

¹These words within square brackets were substituted for the words “any person aggrieved by an award made under sub-section (2) of section 7” by s. 9(1)(i) of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1954 (West Ben. Act VIII of 1954).

²These words within square brackets were substituted for the words “and the person to whom possession of any land is delivered under section 6,” by s. 9(1)(ii), *ibid.*

³This sub-section (2) was substituted for the original sub-section (2) by s. 9(2), *ibid.*

⁴See footnote 1 on p. 430, *ante*.

⁵This word within square brackets was substituted for the word “property” by s. 10(1) of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1954 (West Ben. Act VIII of 1954).

⁶Clause (b) was omitted by s. 10(2), *ibid.*

**436 The West Bengal Land (Requisition and Acquisition)
Act, 1948.**

[West Ben. Act II of 1948.]

(Sections 10—13.)

- (c) authorise any person to perform in respect of any land all or any of the functions referred to in sub-section (2) of section 4 of the Land Acquisition I of 1894. Act, 1894.

Penalty.

10. If any person contravenes any order made under this Act he shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees or with both.

11. Save as otherwise expressly provided in this Act, no decision or order made in exercise of any power conferred by or under this Act shall be called in question in any Court.

**Protection
of action
taken
under this
Act.**

12. (1) No. suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

(2) Save as otherwise expressly provided in this Act, no suit or other legal proceeding shall lie against the ¹[State] Government for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

**No stamp
duty to be
paid for
award or
agreement
and no fees
to be paid
for copies
thereof.**

²12A. No award or agreement made under this Act shall be chargeable with stamp duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy thereof.

**Power to
make
rules.**

13. (1) The ¹[State] Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

- (a) the manner of service of orders on the owner or occupier of land referred to in sub-section (2) of section 3; and
- (b) the manner of service of notice on the persons referred to in sub-section (3) of section 5.

¹See footnote 1 on p. 430, *ante*.

²Section 12A was inserted by s. 11 of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1954 (West Ben. Act VIII of 1954).

West Bengal Act IV of 1948¹

THE WEST BENGAL SPECIAL BENCHES (CONTINUANCE) ACT, 1948.

ADAPTED

... The Adaptation of Laws Order, 1950.

[15th March, 1948.]

An Act to provide for the continuance of the Special Benches constituted under the Bengal Criminal Law Amendment Ordinance, 1947, and for the disposal of cases pending before them.

Ben. Ord.
I of 1947.

Ben. Act I
of 1947.

WHEREAS the provisions of the Bengal Criminal Law Amendment Ordinance, 1947, as enacted and continued in operation by and under the Bengal Ordinances Temporary Enactment Act, 1947 (hereinafter referred to as "the said provisions"), are temporary in their duration;

AND WHEREAS it is expedient that the Special Benches constituted under the said provisions should be continued and the cases which were allotted to them before the commencement of this Act and are pending before them at such commencement should be disposed of by the said Benches in accordance with the said provisions;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal Special Benches (Continuance) Act, 1948.

Short
title
and
commence-
ment.

(2) It shall come into force on the date on which the said provisions cease to operate under the Bengal Ordinances Temporary Enactment Act, 1947.

2. Notwithstanding the expiry of the said provisions it shall be lawful—

Continu-
ance of the
Special
Benches
and dis-
posal of
pending
cases.

(a) for the Special Benches constituted thereunder before the commencement of this Act to dispose of, in accordance with the said provisions, the cases which having been allotted to them thereunder are pending before them at such commencement, and

(b) for the ²[State] Government to reconstitute, in accordance with the said provisions, if necessary, such Special Benches or any of them, for such disposal of the said cases as aforesaid,

and the said Special Benches whether, reconstituted as aforesaid or not, shall continue to function as such till the disposal of the said cases as if the said provisions had not expired.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 2nd February, 1948, Part IV, page 137; for proceedings of the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 13th February, 1948.

²The word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

West Bengal Act XII of 1948¹

THE CORPORATION OF CALCUTTA (INVESTIGATION COMMISSION) ACT, 1948.

ADAPTED

... The Adaptation of Laws Order, 1950.

[15th April, 1948.]

An Act to provide for the appointment of a Commission to investigate certain matters relating to the Corporation of Calcutta, and for certain other matters connected therewith.

WHEREAS it is expedient to provide for the appointment of a Commission to investigate certain matters relating to the Corporation of Calcutta, and for certain other matters connected therewith;

It is hereby enacted as follows:—

1. (1) This Act may be called the Corporation of Calcutta (Investigation Commission) Act, 1948. Short title and extent
(2) It extends to the whole of West Bengal.

2. In this Act the expressions "Calcutta" and "the Corporation of Calcutta" have the same meanings as in the Calcutta Municipal Act, 1923.² Definitions.

Ben. Act
III of
1923.

3. The ³[State] Government may, by notification in the *Official Gazette*, constitute a Commission to be called the Corporation of Calcutta Investigation Commission (hereinafter referred to as the Commission) whose duties it shall be— Constitution and functions of Commission.

(a) to investigate and report to the ³[State] Government on all matters relating to the finances and administration of the Corporation of Calcutta and the working of the Calcutta Municipal Act, 1923;²

(b) to make recommendation for improving the finances and administration of the Corporation of Calcutta, removing abuses in relation thereto, if any, and amending the Calcutta Municipal Act, 1923² if necessary, for ensuring better administration.

4. (1) The Commission shall consist of a Chairman (being a person who is or has been a Judge of a High Court) and two other Commissioners, appointed by the ³[State] Government. Composition of Commission.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 24th February, 1948, Part IV, page 201; for proceedings of the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 22nd March, 1948.

²The Calcutta Municipal Act, 1923 (Ben. Act III of 1923) was repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951).

³The words within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

[West Ben. Act

(Section 5.)

(2) On the occurrence from any cause of a vacancy among the Commissioners, the ¹[State] Government may, if it thinks fit, appoint a person to fill the vacancy.

Powers of
Com-
mission.

5. (1) The Commission shall have power to administer oaths, and shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purposes of taking evidence on oath, enforcing the attendance of any person whom it considers necessary to examine, compelling the production of documents and issuing commissions or letters of request for the examination of witnesses, and shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898, and any reference in the said chapter to the presiding officer of a Court shall be deemed to include a reference to the Chairman of the Commission.

Act V of
1908.

Act V of
1898.

(2) If it appears to the Commission that it is necessary to examine any accounts or documents, or to investigate any particular matter which it cannot itself conveniently examine or investigate, the Commission may authorise any person qualified in its opinion to make such examination or investigation to examine such accounts or documents or to investigate such particular matter and to interrogate for that purpose any person having charge or custody of such accounts or documents, or having knowledge of such particular matter and to make a report to the Commission; any person having charge or custody of such accounts or documents shall be bound to produce them to the person so authorised and to give such person any information in respect thereof which the person so authorised may require; and any person having knowledge of such particular matter shall be bound to give to the person so authorised any information in respect thereof which such person may require. The Commission may make such use of the report as it thinks fit.

(3) (a) The Commission may require the Corporation of Calcutta or any person who is or was a Councillor or an Alderman or any officer or servant of the Corporation of Calcutta to furnish any return, document, plan, estimate, statement, account, statistics, information or report and the Corporation of Calcutta or such Councillor or Alderman or such officer or servant shall be bound to comply with such requisition without delay.

(b) The powers conferred by this sub-section shall be in addition to and not in derogation of the powers conferred by sub-section (1) and sub-section (2).

(4) The Commissioners and all persons authorised by the Commission under sub-section (2) shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

Act XLV
of 1860.

¹See footnote 3 on page 439, ante.

(Sections 6—8.)

6. (1) The Commission shall, subject to the provisions of this Act, have power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or in private) and may act notwithstanding the temporary absence of any Commissioner or Commissioners or a vacancy in the number of the Commissioners.

Procedure
of Commis-
sion.

(2) In making an investigation under clause (a) of section 3, the Commission shall act in accordance with the principles of natural justice and shall follow as far as practicable the principles of the Indian Evidence Act, 1872.

I of 1872.

(3) Except with the previous sanction of the ¹[State] Government,—

(a) no suit, prosecution or other legal proceeding shall be instituted against any person in any Civil or Criminal Court for any evidence given by him in any proceedings before the Commission, and

(b) no evidence so given shall be admissible in evidence against such person in any suit, prosecution or other proceeding before such Court.

(4) No document shall be inadmissible in any proceedings before the Commission on the ground that it is not duly stamped or registered.

7. No act or proceeding of the Commission or of any person authorised by it under sub-section (2) of section 5 shall be called in question in any manner by or in any Court and no suit, prosecution or other legal proceeding shall lie against the ²[Government] or any Commissioner or any other person for anything done or intended to be done under this Act.

Bar of
jurisdic-
tion.

8. The ¹[State] Government may, by notification in the *Official Gazette*, make rules for carrying out the purposes of this Act.

Power
to make
rules.

¹See footnote 3 on p. 439, *ante*.

²The word within square brackets was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

West Bengal Act XIII of 1948¹

THE WEST BENGAL FACTORIES AND MINES (CONTROL OF DISMANTLING) ACT, 1948.

ADAPTED

... The Adaptation of Laws Order, 1950.

[22nd April, 1948.]

An Act to provide for the control of dismantling of factories and mines.

WHEREAS it is expedient to provide for the control of dismantling of factories and mines;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal Factories and Mines (Control of Dismantling) Act, 1948. Short title, extent and commencement.
(2) It extends to the whole of West Bengal.
(3) It shall come into force at once.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(a) “to dismantle” a factory or a mine means to remove from its position the machinery or part of the machinery of the factory or the mine, where by such removal, the factory or the mine is rendered wholly or partly useless for its purpose; but does not include any temporary removal of the machinery or part of the machinery for purposes such as adjustment, cleaning and repairs;

(b) “factory” means a factory as defined in clause (j) of section 2 of the Factories Act, 1934,² but includes also any premises which were at any time whether before or after the commencement of this Act a factory as so defined;

(c) “machinery” has the meaning assigned to that word in clause (k) of section 2 of the Factories Act, 1934;² and

(d) “mine” has the meaning assigned to that word in clause (f) of section 3 of the Indian Mines Act, 1923.³

3. (1) No person shall, without the written permission of the “[State] Government or of an officer authorised in this behalf by the “[State] Government, dismantle any Dismantling a factory or a mine.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 12th March, 1948, Part IV, page 263; for proceedings of the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 23rd March, 1948.

²The Factories Act, 1934 (XXV of 1934) was repealed and re-enacted by the Factories Act, 1948 (LXIII of 1948).

³The Indian Mines Act, 1923 (IV of 1923) was repealed and re-enacted by the Mines Act, 1952 (XXXV of 1952).

⁴The word within square brackets was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Sections 4, 5.)

factory or mine or remove from a factory or a mine any spare parts kept for maintaining the machinery of the factory or the mine in order:

Provided that no such permission shall be required for removing spare parts from one factory or mine for use in another factory or mine within the ¹[State] of West Bengal:

Provided further that intimation in respect of such removal shall be given to the ²[State] Government within seven days from the date of such removal.

(2) Any person who contravenes any of the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.

Offences
by cor-
porations
or firms.

4. Where a company or other corporate body, or a firm contravenes any of the provisions of sub-section (1) of section 3, every director of such company or corporate body, every partner of such firm and every manager or secretary or other officer or agent of such company or corporate body or firm, shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

Powers of
entry, ex-
amination,
taking
evidence,
etc.

5. (1) Subject to any rules made by the ²[State] Government, any officer authorised in this behalf by that Government, may, if he has reason to believe that any person has contravened any of the provisions of sub-section (1) of section 3 within the local limits for which he is so authorised,—

- (a) enter with such assistants (if any), being persons in the service of the ³[Government] as he thinks fit, any place;
- (b) make such examination of the place and of any machinery, books or documents therein and take on the spot or otherwise such evidence of any persons as he may deem necessary for carrying out the purposes of this Act; and
- (c) exercise such other powers as may be necessary for carrying out the purposes of this Act:

Provided that no one shall be required under this section to answer any question or give any evidence tending to criminate himself.

¹The word within square brackets was substituted for the word "Province" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²See foot-note 4 on p. 443, *ante*.

³The word within square brackets was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

XIII of 1948.]

(Sections 6—8.)

(2) Any person who wilfully obstructs an officer authorised under sub-section (1) in the exercise of any power conferred by that sub-section, or fails to produce on demand any book or document in his custody or to comply with any demand for information, or knowingly or recklessly makes to such officer a statement false in a material particular shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.

6. No prosecution for any offence under this Act shall be instituted except by or with the previous sanction of the ¹[State] Government or the officer authorised by the ¹[State] Government for the purposes of sub-section (1) of section 3. Cognizance
of offences.

7. No suit, prosecution, or other legal proceeding shall lie against any person for anything which is in good faith done, or intended to be done, under this Act. Bar of
legal pro-
ceedings.

8. (1) The ¹[State] Government may make rules for carrying out the purposes of this Act. Power to
make
rules.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide—

- (a) for the procedure for the grant of the permission referred to in sub-section (1) of section 3;
- (b) for an appeal against a refusal to grant the permission referred to in sub-section (1) of section 3 when such refusal is by an officer authorised in pursuance of that section; and
- (c) for regulating the manner in which officers authorised under sub-section (1) of section 5 shall exercise their powers.

¹See footnote 4 on p. 443, *ante*.

West Bengal Act XIV of 1948
THE WEST BENGAL PRIVATE FORESTS ACT, 1948.

CONTENTS.

CHAPTER I.

PRELIMINARY.

Section.

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II.

CONSERVATION OF PRIVATE FORESTS AND AFFORESTATION OF WASTE-LANDS.

3. Preparation of, and appeal and revision in respect of working plans for private forests.
4. Approved working plans.
5. Prohibition of leases and extension of terms of existing leases of private forests after issue of notification under section 3(1).
- 5A. Prohibition of felling or removal of trees of private forests after issue of notification under section 3(1).
6. Penalty for the violation of working plan.
7. Vesting of forest in a Regional Forest-officer.
8. Forest loans.
9. Amalgamation of two or more vested forests under one working plan.
10. Afforestation of land adjoining a forest.
11. Afforestation of other land.
12. Apportionment of rents of forests held under a lease jointly with other lands and the division of the tenure or holding comprising a forest.
13. Rent to be a charge on the lease-hold interest in a vested forest.
14. Power to order a vested forest to be formed into a separate estate.
15. Power to exempt an estate of which a vested forest forms part from sale for arrears of revenue.
16. Determination of cost of management of vested forest and distribution of not profit.
17. Imposition of cess.
18. Release of vested forest to the owner.

CHAPTER III.

RIGHTS IN FORESTS.

19. Control and demarcation of vested forest.
20. Appointment of Forest Settlement-officer.
21. Bar of accrual of rights.
22. Proclamation by Forest Settlement-officer.
23. Inquiry by Forest Settlement-officer.
24. Powers of Forest Settlement-officer.
25. Specification and modification of rights.
26. Appeals.
27. Pleadings.
28. Extinction of rights.

CHAPTER IV.

PENALTIES AND PROCEEDURE.

29. Penalties for breach of rules.
30. Imposition of collective fine on the inhabitants in certain cases.
31. Nothing in sub-section (1) of section 29 to prohibit acts done in certain cases.

Section.

32. Seizure of property liable to confiscation.
33. Power to release property seized under section 32.
34. Information to the Magistrate and procedure thereupon.
35. Notice to claimants of seized forest-produce.
36. Disposal of unclaimed forest-produce.
37. Disposal of seized property after information has been given under section 34.
38. Disposal of confiscated property on conclusion of trial.
39. Procedure when offender cannot be found.
40. Procedure as to perishable property seized under section 32.
41. Appeal from orders under section 37 or section 39.
42. Property when to vest in Government.
43. Saving of power to release property seized.
44. Punishment for wrongful seizure.
45. Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary marks.
46. Power to arrest without warrant.
47. Power to release on a bond a person arrested.
48. Power to prevent commission of offence.
49. Power to try offences summarily.
50. Power of Court to order payment of rewards out of fine.
51. Power to compound offences.
52. Onus of proof.

CHAPTER V.

REGIONAL FOREST-OFFICERS.

53. State Government may invest Regional Forest-officers with certain powers.
54. Power of officers.
55. Forest-officers deemed public servants.
56. Indemnity for acts done in good faith.

CHAPTER VI.

RULES.

57. Power to make rules.
58. Application of rules made under sections 41 and 42 of the Indian Forest Act, 1927, to transit of forest-produce from private forests.

CHAPTER VII.

MISCELLANEOUS.

59. Conservation of forest or afforestation of land at the request of owners.
60. Recovery of money due to Regional Forest-officer and lien on forest-produce for such money.
61. Land required under this Act to be deemed to be needed for a public purpose under the Land Acquisition Act, 1894.
62. Powers of the Regional Forest-officer and control of the State Government.
63. Repeal and Savings.
64. Repeal of Bengal Act XI of 1945.

West Bengal Act XIV of 1948

THE WEST BENGAL PRIVATE FORESTS ACT, 1948¹.

AMENDED

.. { West Ben. Act XX of 1954.
.. { West Ben. Act XVII of 1955.

ADAPTED

.. The Adaptation of Laws Order, 1950.

[23rd April, 1948.]

An Act to provide for the conservation of private forests and for the afforestation in certain cases of waste-lands in West Bengal.

WHEREAS it is expedient to provide for the conservation of forests and for the afforestation of waste-lands in West Bengal where such forests or lands are not the property of the Crown or where the Crown has no proprietary right over such forests or lands;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the West Bengal Private Forests Act, 1948.

(2) It extends to the whole of West Bengal.

²(3) This section shall come into force at once and the remaining provisions of this Act, in whole or in part, shall come into force in such areas and on such dates as the ³[State] Government may, by notification, specify and for this purpose different dates may be specified for different provisions of this Act and for different areas.

Explanation.—In this section, West Bengal shall, as from the date of the commencement of the Constitution of India, be deemed to include the areas in West Bengal which were partially excluded areas within the meaning of section 91 of the Government of India Act, 1935, as in force immediately before such commencement.

26 Geo. V.
C. 2.

Short
title,
extent and
commence-
ment.

2. In this Act, unless there is anything repugnant in the subject or context,—

- (1) “Appellate Committee” means a committee the procedure of which shall be as prescribed, appointed by the ³[State] Government in respect of a

Defini-
tions.

¹For the Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 15th January, 1948, and for proceedings of the Assembly, see the West Bengal Legislative Assembly Proceedings, Vol. II, No. 1, pages 197-210.

²Sections 2 to 64 of the Act were brought into force in the district of Midnapore except the Garbeta police-station in the Sadar subdivision of the said district and also in the district of Bankura, on the 22nd April, 1948, vide Notification No. 2524For., dated the 22nd April, 1948, published at page 412 of the *Calcutta Gazette, Extraordinary*, of the 23rd April, 1948.

³This word within square brackets was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴This Explanation was added by section 2 of the West Bengal Private Forests (Amendment) Act, 1955 (West Ben. Act XVII of 1955).

(Chapter 1.—Preliminary.—Section 2.)

notified area to hear appeals under this Act consisting of three members of whom the Chairman shall be a Revenue Officer not below the rank of a Collector, one member shall be a member of the Indian Forest Service or the West Bengal Forest Service not below the rank of a Deputy Conservator of Forests and the other member shall be an owner of a private forest who shall be selected in the prescribed manner from amongst the owners of private forests in such notified area;

- (2) "cattle" includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids;
- (3) "conservation", used in reference to a forest, includes such measures as are necessary in the opinion of the Regional Forest-officer for the prevention or remedying of the erosion of the soil or any flood or landslide;
- (4) "Controlled forest" means a forest in respect of which a working plan has been approved under sub-section (1) of section 4;
- (5) "forest" includes any land recorded as forest in a record of rights prepared under Chapter X of the Bengal Tenancy Act, 1885;
- (6) "forest-offence" means an offence punishable under this Act or under any rule made thereunder;
- (7) "Forest-officer" means any person whom the ¹[State] Government or any officer empowered by the ¹[State] Government in this behalf, may appoint to carry out all or any of the purposes of this Act or to do anything required by this Act or any rule made thereunder to be done by a Forest-officer;
- (8) "forest-produce" includes—
 - (a) the following whether found in, or brought from, a forest or not, that is to say:—
 - (i) timber, charcoal, caoutchouc, catechu, woodoil, resin, natural varnish, bark, lac, *mahua* flowers, *mahua* seeds, *kuth* and myrabolams, and
 - (ii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and

VIII of
1885.¹See footnote 3 on p. 449, *ante*.

XIV of 1948.]

(Chapter I.—Preliminary.—Section 2.)

- (b) the following^{*} when found in, or brought from, a forest, that is to say:—
- (i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees,
 - (ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants, and
 - (iii) peat, surface soil, rock and minerals (including lime-stone, laterite, mineral oils, and all products of mines or quarries);
- (9) “Forest Settlement-officer” means an officer, who shall ordinarily be a Revenue Officer, appointed by the ¹[State] Government to perform the functions of a Forest Settlement-officer under this Act and includes a Board, the procedure of which shall be as prescribed, appointed by the ¹[State] Government to perform such functions, consisting of not more than three officers of whom at least two shall be Revenue Officers;
- (10) “notification” means a notification published in the *Official Gazette*;
- (11) “notified area” means an area specified in a notification issued under sub-section (1) of section 3;
- (12) “owner” includes any mortgagee in possession, lessee, common manager, receiver appointed by a competent Court and any person holding any property in trust and also includes a Court of Wards in respect of property under the superintendence or charge of such Court;
- (13) “prescribed” means prescribed by rules made under this Act;
- (14) “private forest” means a forest which is not the property of the ²[Government] or over which the ²[Government] has no proprietary right;
- (15) “Regional Forest-officer” means a Forest-officer appointed by the ¹[State] Government as such by a notification for a notified area;
- (16) “river” includes any stream, canal, creek or other channel, natural or artificial;
- (17) “timber” includes trees when they have fallen or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not;

¹See footnote 3 on p. 449, *ante*.

²This word within square brackets was substituted for the word “Crown” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Section 3.)

- (18) "tree" includes palms, bamboos, stumps, brushwood and canes;
- (19) "vested forest" means a forest of which the control has been vested in a Regional Forest-officer by a notification under sub-section (2) of section 6 or under section 7 or under section 11 and includes any forest deemed to be, or managed as, a vested forest under this Act;
- (20) "waste-land" means any waste-land which is not the property of the ¹[Government] or over which the ¹[Government] has no proprietary right;
- (21) "working plan" means a written scheme for the management and treatment of a forest; and
- (22) "year" means a year beginning on the 1st day of April.

CHAPTER II.

CONSERVATION OF PRIVATE FORESTS AND AFFORESTATION OF WASTE-LANDS.

Prepara-
tion of,
and
appeal
and re-
vision in
respect of
working
plans for
private
forests.

3. (1) The ²[State] Government may, by notification, direct that every owner of a private forest which is not a vested forest, but which is situated within such area as may be specified in the notification, shall prepare in the prescribed manner and submit within the period mentioned in the notification to the Regional Forest-officer a working plan for the conservation of such private forest.

(2) On the expiry of the period mentioned in the notification under sub-section (1), the Regional Forest-officer shall, after considering each working plan submitted to him under that sub-section, and after consultation in the manner prescribed with the Conservator of Forests of the forest circle within which such forest is situated, by an order in writing, accept the working plan or modify it in such manner as he may consider necessary or substitute another working plan for it.

(3) If any owner of such private forest does not submit a working plan within the period specified in the notification issued under sub-section (1), the Regional Forest-officer may, after consultation in the manner prescribed with the Conservator of Forests of the forest circle within which such forest is situated, prepare a working plan in respect of such forest.

¹See foot-note 2 on page 451, *ante*.

²See foot-note 3 on page 449, *ante*.

XIV of 1948.]

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Section 4.)

(4) When the Regional Forest-officer by an order in writing modifies any working plan under sub-section (2) or substitutes another working plan under that sub-section for the working plan submitted under sub-section (1), he shall cause a copy of such order to be served in the prescribed manner upon the owner of such private forest to which such working plan relates and such owner may, within sixty days of the date of service of such order, appeal against such order to the Appellate Committee and the Appellate Committee may thereupon, after giving such owner an opportunity of being heard, by an order in writing, either accept the working plan with or without modifications or reject it and the decision of the Appellate Committee on every such appeal shall, subject to the provisions of sub-section (5), be final.

(5) The Board of Revenue may, on application by an owner of a private forest for revision of an order of the Appellate Committee passed in appeal under sub-section (4), and if such application is made within thirty days from the date of the order, call for the record of the appeal in which the order was passed and on receipt of such record, after giving such owner an opportunity of being heard, may, if it does not see fit to reject the application, direct the Appellate Committee by an order in writing to make such modifications in the working plan accepted by the said Committee under sub-section (4) as may be specified in such order in writing.

(6) The Board of Revenue shall, as soon as may be after an application for revision is disposed of under sub-section (5), communicate the order passed by it on such application to the Appellate Committee, and on receipt of such order the Appellate Committee shall, where the Board of Revenue has directed any modification to be made in such working plan, modify it accordingly.

4. (1) When the Appellate Committee accepts any working plan with or without modification under sub-section (4) of section 3, or modifies any working plan under sub-section (6) of the said section, or the Regional Forest-officer accepts, modifies or substitutes any working plan under the said section, or prepares any working plan under the said section, such Committee or officer shall by an order in writing approve such working plan or the working plan as so modified by the Committee or such officer, as the case may be, and every working plan so approved shall be deemed for the purposes of this Act to be an approved working plan:

Approved
working
plans.

Provided that the Regional Forest-officer shall not so approve any working plan that he has modified or substituted by an order under sub-section (2) of section 3 if,—

- (a) an appeal against the order has been made to the Appellate Committee; or

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Section 4.)

- (b) where no such appeal has been made, the time within which such appeal may be made has not expired :

Provided further that the Appellate Committee shall not so approve any working plan accepted by it with or without modification by an order under sub-section (4) of section 3 if,—

- (a) where an application for revision of the order has been made to the Board of Revenue, the order of the Board of Revenue on such application has not been received by such Committee; or
- (b) where no such application for revision has been made, the time within which such application may be made has not expired.

(2) A copy of every approved working plan shall be sent in the prescribed manner by the Regional Forest-officer to the owner of the private forest to which it relates and the owner shall thereupon manage such forest in accordance with such plan and shall carry out all the terms and conditions thereof.

(3) At any time after five years from the date of approval of a working plan under sub-section (1), or with the previous sanction of the ¹[State] Government at any time within the said period of five years, a Regional Forest-officer may, after consultation in the manner prescribed with the Conservator of Forests of the forest circle within which the forest to which such working plan relates is situated, by an order in writing, modify the approved working plan in such manner as he considers necessary and the provisions of sub-sections (4), (5) and (6) of section 3 and sub-sections (1) and (2) of this section shall apply to every plan so modified :

Provided that nothing in this section shall prevent the owner after the expiry of the said period of five years from applying in writing to the Regional Forest-officer for the modification of the working plan in such manner as may be specified in the application and if the Regional Forest-officer, after giving the owner an opportunity of being heard, does not see fit after such consultation as aforesaid so to modify the working plan, he shall record an order to that effect and the owner may within thirty days from the date of such order appeal against such order to the Appellate Committee and an application for revision shall also lie to the Board of Revenue from any order passed by the Appellate Committee on such appeal if presented within thirty days from the date of such order and the decision of the Appellate Committee on such appeal shall, subject to such revision by the Board of Revenue, be final.

¹See footnote 3 on p. 449, *ante*.

XIV of 1948.]

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Sections 5—6.)

5. After the publication of a notification under sub-section (1) of section 3, no owner of a private forest in the notified area shall enter into any new lease or extend the term of any existing lease in respect of such forest until the working plan in respect of such forest has been approved under sub-section (1) of section 4 except with the previous sanction of the ¹[State] Government and, after such working plan has been so approved, except in accordance with the terms and conditions of such plan and any lease entered into or any extension of the term of any lease granted in contravention of the provisions of this section shall, notwithstanding anything contained in any other law for the time being in force, be void and have no effect.

Prohibition of leases and extension of terms of existing leases of private forests after issue of notification under section 3(1).

²5A. (1) After the publication of a notification under sub-section (1) of section 3, no owner of a private forest in the notified area or other person shall fell or cause to be felled or remove or cause to be removed from such forest any tree or trees until the working plan in respect of such forest has been approved under sub-section (1) of section 4 except after obtaining in writing, and in accordance with, the previous permission of the Regional Forest Officer in this behalf.

Prohibition of felling or removal of trees of private forests after issue of notification under section 3(1).

(2) Any person contravening the provisions of sub-section (1) shall be punishable with imprisonment which may extend to three months or with fine which may extend to one thousand rupees or with both.

6. (1) If after an approved working plan in respect of any private forest has been sent under sub-section (2) of section 4 to the owner of such forest, such owner fails or neglects to carry out any of the terms and conditions of such plan, ³[or fells or causes to be felled or removes or causes to be removed from such forest any tree or trees in contravention of any of such terms and conditions,] he shall be punishable ⁴[with imprisonment which may extend to three months or with fine which may extend to one thousand rupees or with both]:

Penalty for the violation of working plan.

Provided that ⁵[, except where the owner has felled or caused to be felled or removed or caused to be removed from such forest any tree or trees in contravention of any of the

¹See footnote 3 on p. 449, *ante*.

²This section was inserted by section 2 of the West Bengal Private Forests (Amendment) Act, 1954 (West Ben. Act XX of 1954).

³These words within square brackets were inserted by section 3(1)(a), *ibid*.

⁴These words within square brackets were substituted for the words "with fine which may extend to five hundred rupees" by sec. 3(1)(b), *ibid*.

⁵These words within square brackets were inserted by sec. 3(1)(c), *ibid*.

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Section 7.)

terms and conditions of the approved working plan,] no prosecution shall be instituted under this sub-section unless the Regional Forest-officer has served in the prescribed manner a notice on such owner specifying the terms and conditions of the working plan which such owner has failed or neglected to carry out and requiring such owner to take such steps for carrying them out as are specified in the notice within thirty days from the date of service of such notice and unless such owner has failed to comply with such notice.

(2) If the owner of a private forest is convicted a second or subsequent time under sub-section (1) for the failure or neglect to carry out any of the terms and conditions of the working plan in respect of such forest ¹[or for felling or causing to be felled or removing or causing to be removed from such forest any tree or trees in contravention of any of such terms and conditions], the ²[State] Government may, by a notification, direct that the control of such forest shall be vested in such Regional Forest-officer for such period as may be specified in such notification:

Provided that no such notification shall be issued until such owner has been called upon by notice in writing by the Regional Forest-officer within sixty days of such conviction to show cause before the Appellate Committee within such time as may be specified in the notice as to why such notification should not be issued and until the Appellate Committee, after considering the cause, if any, shown by him and any evidence which he may produce in support thereof, has recommended to the ²[State] Government that such notification should be issued.

(3) Nothing in sub-section (1) shall render any owner, of any private forest liable to conviction for any deviation from any approved working plan if such deviation has been previously sanctioned by the Regional Forest-officer on application made by such owner in that behalf to such officer or by the Appellate Committee on an appeal from an order of the Regional Forest-officer refusing to sanction such deviation presented by the owner to such committee within thirty days from the date of such order.

7. Notwithstanding anything contained in sections 3 and 4 or in sub-section (2) of section 6, if the ²[State] Government is satisfied that the conservation of any private forest in a notified area should not be left to the owner thereof, the ²[State] Government may, by a notification

Vesting
of forest
in a
Regional
Forest-
officer.

¹These words within square brackets were inserted by sec. 3(2) of the West Bengal Private Forests (Amendment) Act, 1954 (West Ben. Act XX of 1954).

²See footnote 3 on p. 449, *ante*.

XIV of 1948.]

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Section 8.)

specifying the reasons for so doing, direct that the control of such forest shall be vested in such Regional Forest-officer for such period as may be specified in the notification:

Provided that no such notification shall be issued until,—

- (a) the Regional Forest-officer has, by notice in writing, called upon the owner of such forest to show cause before the Appellate Committee within such period as may be specified in such notice why the control of such forest should not be so vested, and
- (b) the Appellate Committee after considering the cause, if any, shown by the owner and any evidence which the owner may produce in support of the same has recommended that such notification should be issued.

8. (1) Subject to rules made under this Act, loans may be granted on the recommendation of the Appellate Committee by such officer as may be empowered in this behalf by the ¹[State] Government to any owner of a controlled forest or of a vested forest who, in the opinion of the Appellate Committee, is likely to suffer unduly owing to any temporary reduction of his income resulting from any action taken under section 4 or sub-section (2) of section 6 or section 7 or to any owner of a controlled forest to enable such owner to pay any compensation payable by him under sub-section (6) of section 10 or sub-section (2) of section 25.

Forest
loans.

(2) An application for such a loan shall be made in the prescribed manner to the Appellate Committee and shall state the following particulars, namely:—

- (a) the amount of the loan required,
- (b) the reasons for which it is necessary, and
- (c) the period for which it is required.

(3) After considering in the prescribed manner the application made under sub-section (2) and any evidence that may be produced in support thereof, the Appellate Committee shall state in writing its opinion as to whether or not a loan should be given, and, if it recommends the grant of a loan, shall forward the application to the officer empowered under sub-section (1) with its opinion, stating the reasons for such recommendation and specifying the following particulars, namely:—

- (a) the amount of the loan that should be granted and the rate of the interest that should be charged,
- (b) the instalments in which the loan should be advanced, and
- (c) the period after which and the instalments in which the loan should be repaid.

¹See footnote 3 on p. 449, *ante*.

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Sections 9, 10.)

(4) Subject to rules made under this Act all loans granted under sub-section (1), all interests, if any, chargeable thereon and costs, if any, incurred in granting such loans shall, when they become due, be recoverable by the Collector as if they were arrears of land revenue due in respect of the controlled forest or the vested forest of which the borrower was the owner at the time the loan was granted:

Provided that no proceeding in respect of any such forest under this sub-section shall effect any interest in that forest which existed before the date of the order granting the loan other than the interest of the borrower and of mortgagees of, or persons having charges on, the interest of the borrower.

Amalgamation of two or more vested forests under one working plan.

9. (1) If, after consultation in the prescribed manner with the Conservator of Forests of the forest circle within which the forests are situated, a Regional Forest-officer is of the opinion that it is impossible otherwise to secure the conservation of two or more forests, belonging to different owners, of which the control has been vested in him by a notification under sub-section (2) of section 6 or under section 7, he may record an order that such forests shall be managed under one working plan as if they belonged to one owner, and shall cause a copy of such order to be served in the prescribed manner on the owner of each such forest.

(2) The Regional Forest-officer may at any time, after consultation in the manner referred to in sub-section (1), by order in writing rescind or modify an order passed by him under that sub-section and a copy of every order passed under this sub-section shall be served in the prescribed manner on the owner of each such forest.

(3) Any owner or other person interested in any such forests may, within thirty days from the date on which the copy of any order passed under sub-section (1) or sub-section (2) is served on him, appeal against such order to the Appellate Committee and the decision of the Appellate Committee on such appeal shall, subject to the provisions of sub-section (4), be final.

(4) The Board of Revenue may, on application made within thirty days from the date of any order of the Appellate Committee passed in appeal under sub-section (3), revise such order.

Afforestation of land adjoining a forest.

10. (1) The [State] Government may, if it is satisfied on application made by the owner of a controlled forest, or by the Regional Forest-officer in whom the control of a private forest is vested under this Act, that any land adjoining such forest has not been cultivated during the

¹See footnote 3 on p. 449, *ante*.

XIV of 1948.]

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Section 10.)

three years immediately preceding the year in which such application is made and that such land is suitable for afforestation, by notification, announce its intention to declare such land to be liable to be made over to the owner of such controlled forest or vested forest, as the case may be.

(2) Every notification issued under sub-section (1) shall specify a period within which objections to the proposed declaration may be submitted by any person interested in such land to the Appellate Committee and a copy of every such notification shall be served in the prescribed manner on the person entitled to cultivate such land.

(3) After the expiry of the period so specified in a notification issued under sub-section (1), the Appellate Committee shall hear the objections, if any, submitted by the person entitled to cultivate such land or any other person interested in such land and any evidence which any such person may produce in support of the same and forward the objections so submitted and its opinion thereon to the¹[State] Government.

(4) If, after considering the objections and the opinion of the Appellate Committee forwarded under sub-section (3), the¹[State] Government is of opinion that such land should be declared to be liable to be made over to the owner of the controlled or vested forest referred to in sub-section (1), the¹[State] Government shall issue a notification—

- (a) declaring such land to be liable to be made over to the owner of such forest to be specified in the notification,
- (b) specifying as nearly as possible the situation and limits of such land, and
- (c) appointing a Forest Settlement-officer to determine, subject to any rules made under this Act, by an order in writing,—
 - (i) what rights in or over such land shall be extinguished, and
 - (ii) what rent, if any, shall be payable by the owner of such forest to any landlord of such land.

(5) When a notification has been issued under sub-section (4), the amount of the compensation payable under sub-section (6) to every person whose rights as specified by the Forest Settlement-officer under sub-clause (i) of clause

¹See footnote 3 on p. 449, *ante*.

[West Ben. Act

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Section 10.)

(c) of sub-section (4) are to be extinguished shall be determined, subject to any rules made under this Act, in the manner and in accordance with the principles hereinafter set out, that is to say—

- (i) when the amount of compensation can be fixed by the Forest Settlement-officer appointed under clause (c) of sub-section (4) by agreement, it shall be paid in accordance with such agreement;
- (ii) where no such agreement can be reached, the ¹[State] Government shall appoint as arbitrator a person who has exercised the powers of a District Judge in West Bengal or who possesses such qualifications as are normally required for appointment to the post of District Judge in West Bengal;
- (iii) at the commencement of the proceedings before the arbitrator the owner of the forest, or the Regional Forest-officer by whom the compensation is payable, and the person to be compensated shall state what in their respective opinions is a fair amount of compensation;
- (iv) the arbitrator in making his award shall have regard to the provisions of sub-section (1) of section 23 of the Land Acquisition Act, 1894, so far as the same can be made applicable; I of 1894.
- (v) an appeal shall lie to the High Court against an award of an arbitrator except in cases where the amount thereof does not exceed an amount prescribed in this behalf;
- (vi) save as provided in this sub-section and in any rules made under this Act, nothing in any law for the time being in force shall apply to arbitrations under this sub-section.

(6) The amount of compensation determined under sub-section (5) shall be paid in the prescribed manner, in the case where the notification under sub-section (1) was issued on the application of the owner of a controlled forest, by such owner, and in the case where such notification was issued on the application of a Regional Forest-officer, by such officer out of the profits of the vested forest adjoining such land, to the person entitled to such compensation and, on payment of such compensation, the land shall be made over by the Forest Settlement-officer appointed under clause (c) of sub-section (4) to the owner of the controlled or vested forest specified in the notification issued under that sub-section and shall thereupon vest in such owner and all rights in or over

¹See foot-note 3 on page 449, *ante*.

XIV of 1948.]

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Section 11.)

such land specified by the said officer under sub-clause (i) of the said clause shall with effect from the date on which such land is so made over be extinguished.

(7) When any land is made over under sub-section (6) to the owner of a forest, it shall, with effect from the date on which it is so made over, be deemed to be a private forest.

(8) When any such land is made over under sub-section (6) to the owner of a vested forest which adjoins such land, the control of such land shall be vested in the Regional Forest-officer in whom the control of such forest is for the time being vested and the land shall, for the purposes of this Act, be deemed to be a vested forest.

(9) When any such land is made over under sub-section (6) to the owner of a controlled forest which adjoins such land, the Regional Forest-officer may, after consultation in the prescribed manner with the Conservator of Forests of the forest circle within which such controlled forest is situated, by an order in writing, a copy of which shall be served on such owner in the prescribed manner, either direct that the approved working plan in respect of such controlled forest shall be deemed to be the working plan approved for such land under sub-section (1) of section 4 or require such owner to prepare in the prescribed manner and submit within the period to be mentioned in such order to such officer a working plan in respect of such land.

(10) Where the owner of a controlled forest is required under sub-section (9) to prepare and submit a working plan in respect of the land made over to him under sub-section (6), the provisions of sections 3 and 4 shall apply to such working plan as if such owner has been required to prepare such working plan under sub-section (1) of section 3.

11. (1) If it appears from the report of a Regional Forest-officer that any waste-land which is lying uncultivated for not less than three years is suitable for afforestation and that the owner of such land is unwilling or unable to cultivate it by growing therein agricultural crops, or to use it for the purposes of horticulture to the satisfaction of such officer or to afforest it, the ¹[State] Government may, by a notification, direct that the control of such land shall be

Affore-
station
of other
land.

¹See footnote 3 on p. 449, ante.

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Section 12.)

vested in a Regional Forest-officer to be specified in the notification for the purpose of afforestation for such period as may be stated in the notification:

Provided that the ¹[State] Government shall not issue any notification under this sub-section without considering whether or not such land can more advantageously be used for the purposes of agriculture or horticulture than for the purpose of afforestation:

Provided further that no such notification shall be published until a notice has been issued by such Regional Forest-officer calling upon the owner of such land and any other person interested therein to show cause before the Appellate Committee within such period as may be specified in the notice why the notification should not be published and until the cause, if any, shown and any evidence that may have been produced in support of the same before the Appellate Committee and the opinion of the Appellate Committee thereon have been considered by the ¹[State] Government.

(2) Any land in respect of which a notification has been published under sub-section (1) shall be deemed to be a vested forest for the purposes of this Act.

(3) When all expenses incurred by the ¹[State] Government for the afforestation of any such land have been recouped, the profits resulting from such afforestation shall, during the period the control of such land remains vested in a Regional Forest-officer, be divided in equal shares between the ¹[State] Government and the owner of the land.

Appor-
tionment
of rents of
forests
held under
a lease
jointly
with other
lands and
the divi-
sion of the
tenure or
holding
comprising
a forest.

12. (1) Notwithstanding anything contained in any other law for the time being in force, where a private forest or any waste-land is, at the date of publication of a notification vesting the control thereof in a Regional Forest-officer under sub-section (2) of section 6 or under section 7 or under section 11, as the case may be,—

(a) held under a lease granted by the owner of such forest or land before the date of publication of such notification, and such lease comprises not only the areas included in such forest or land but also other areas, or

(b) held by the owner of such forest or land as part of a tenure or holding jointly with other lands,

¹See footnote 3 on p. 449, *ante*.

XIV. of 1948.]

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Section 13.)

the Collector of the district may, on application made in this behalf by such Regional Forest-officer,—

(i) in the case referred to in clause (a), by an order in writing, apportion, subject to rules made under this Act, the rent payable under the lease between the areas included within the vested forest and other areas comprised within the lease on the basis of their respective assets, and

(ii) in the case referred to in clause (b), by an order in writing direct the division of such tenure or holding in such manner that a separate tenure or holding is formed with the lands included within the vested forest and also direct such distribution of the rent payable in respect of such tenure or holding between the two separate tenures or holdings so formed as he deems fair and equitable:

Provided that no order shall be passed under this sub-section without giving, in the case of an order passed under clause (i) the lessor and the lessee of such forest or land, and in the case of an order passed under clause (ii) the owner of such forest or land and the landlord or landlords, or their common agent, if any, of the tenure or holding, a reasonable opportunity of being heard.

(2) An appeal shall lie from every order passed under sub-section (1) to the Commissioner of the Division if it is presented within thirty days from the date of such order and the decision of the Commissioner on such appeal shall be final and shall not be questioned in any Court.

Explanation.—In this section, “lease,” “lessor” and “lessee” have the same meanings as in the Transfer of Property Act, 1882, and “tenure” and “holding” have the same meanings as in the Bengal Tenancy Act, 1885.

IV of 1882.

VIII of 1885.

Rent to be a charge on the leasehold interest in a vested forest.

13. Where a private forest or waste-land of which the control has been vested in a Regional Forest-officer by a notification under sub-section (2) of section 6 or under section 7 or under section 11 is, at the date of publication of such notification, held either exclusively or jointly with other property under a lease granted by the owner of such forest or land before such date, the rent payable under the lease or under an order of apportionment made under clause (i) of such-section (1) of section 12 in respect of such forest or land during the period such forest or land remains so vested in the Regional Forest-officer shall, subject to the prior payment of the land-revenue, if any, due to the Government thereupon, be a first charge upon the leasehold interest in such forest created by such lease.

[West Ben. Act

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Sections 14—16.)

Power to order a vested forest to be formed into a separate estate.

14. The ¹[State] Government may, if it thinks it expedient, direct the Collector to partition off that part of an estate which comprises a vested forest into a separate estate; and the demand in respect of land-revenue and cess for which the original estate was liable shall on such partition be assessed upon and divided between the two separate estates so formed respectively in such manner as the ¹[State] Government may direct.

Power to exempt an estate of which a vested forest forms part from sale for arrears of revenue.

15. The ¹[State] Government may, if it so considers expedient, by a notification, exempt any estate, and subject to the provisions of section 14 of the Bengal Land-revenue Sales Act, 1859, every share or part of an estate for which a separate account has been opened under section 10, or section 11 of the said Act, or under section 70 of the Land Registration Act, 1876, of which a vested forest forms part, from sale for arrears of Government revenue accruing during the period the control of such forest remains vested in a Regional Forest-officer under sub-section (2) of section 6 or under section 7 or under section 11 or during such part of such period as may be specified in such notification:

XI of 1859.

Ben. Act VII of 1876.

Provided that where any such estate, share or part is so exempted, all such arrears of revenue shall be the first charge upon the sale-proceeds of such estate, share or part which may be sold otherwise than for such arrears of revenue.

Determination of cost of management of vested forest and distribution of net profit.

16. (1) The cost of any extra staff required for the management of a vested forest in each year shall be determined in the prescribed manner by the Regional Forest-officer and shall be recovered by him in that year, or in subsequent years, from the sale of the forest produce of such forest.

(2) The cost of the operations of any Forest Settlement-officer and such part of the cost of a Regional Forest-officer and of his staff as is proportionate to the work done by them in connection with the management of a vested forest shall be included in the cost of management.

(3) Any amount due in respect of a loan made under section 8 to the owner of a vested forest shall be included in the cost of management of such forest.

(4) Any amount paid as compensation by the Regional Forest-officer under sub-section (6) of section 10 out of the profits of a vested forest or paid as compensation by the Regional Forest-officer under sub-section (2) of section 25, and to be recouped under that sub-section from the profits of a vested forest, shall be included in the cost of management of such forest.

¹See footnote 3 on p. 449, ante.

XIV of 1948.]

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands—Section 18.)

(5) Until otherwise determined by a competent Court, the respective shares of the owners of a vested forest shall be determined by a Forest Settlement-officer in the prescribed manner, and thereafter, the net profits in respect of such forest, which shall be calculated in the prescribed manner, shall be distributed among the various owners thereof in proportion to their respective shares as so determined.

(6) In each year the Regional Forest-officer shall record in a statement the cost of management with which each vested forest shall be charged and any amount which shall be paid in respect of the net profits calculated under sub-section (5) and shall cause a copy of such statement to be served in the prescribed manner on the owner of such forest.

17. (1) The ¹[State] Government may impose in the prescribed manner on an acreage basis a cess on all private forests within a notified area with effect from such date, not being before the expiry of ten years from the date of publication of a notification under section 3, as the said Government may appoint. Imposition of cess.

(2) Such cess shall be so calculated as to yield a sum not greater than that which is sufficient to meet the cost of the Regional Forest-officer and his staff, including any expenses incurred in connection with their work to be determined in the prescribed manner.

(3) If the Regional Forest-officer or his staff does any work in connection with a Government forest, a proportionate deduction shall be made from the cost of such Regional Forest-officer and of his staff before the cess is calculated under sub-section (2).

(4) Every cess imposed under sub-section (1) shall be recoverable as a public demand under the Bengal Public Demands Recovery Act, 1913.

(5) The ¹[State] Government may, by general or special order, exempt any private forest in a notified area from the payment of any cess imposed under sub-section (1) or of any portion of such cess for such period as may be specified in such order.

Ben. Act
III of
1913.

18. (1) If the owner of a vested forest satisfies the Appellate Committee— Release of vested forest to the owner.

(a) at any time after the expiry of fifteen years from the date of the notification by which the control of such forest has been vested in a Regional Forest-officer, that—

(i) the control of such forest may be restored to him without undue risk of detriment to its conservation, and

¹See footnote 3 on p. 449, ante.

(Chapter II.—Conservation of Private Forests and Afforestation of Waste-lands.—Section 18.)

(ii) the cost of its management as determined under the provisions of sub-section (1) of section 16 has been recovered in full, or

(b) at any time after the expiry of thirty years from the date of such notification, that the cost of management of such forest as determined under the provisions of that sub-section has been recovered,

the Appellate Committee shall by order direct that with effect from a date, to be specified in such order, the control of such forest shall cease to be vested in the Regional Forest-officer :

Provided that no such order shall be made in the case of any forest, whether any working plan in respect of such forest has been previously approved under section 4 or not, until—

(a) the Appellate Committee has by an order called upon the owner of such forest to prepare in the prescribed manner and to submit within such period as may be specified in such order to the Regional Forest-officer a working plan in respect of such forest, and

(b) a working plan has been approved in respect of such forest in accordance with the provisions referred to in sub-section (2) :

Provided further that no such order shall be passed regarding a forest in respect of which there subsists an order passed under sub-section (1) of section 9, unless the owners of all the forests, in respect of which the order under the said sub-section was passed, have satisfied the Appellate Committee that there will be no undue risk of detriment to the conservation of any of such forests if the control of the said forest ceases to be vested in the Regional Forest-officer.

(2) When the owner of a forest has been required under the first proviso to sub-section (1) to prepare and submit a working plan in respect of such forest, the provisions of sections 3 and 4 shall apply to such working plan as if such owner has been required to prepare such working plan under sub-section (1) of section 3.

(3) The fact that the control of any forest has ceased to be vested in a Regional Forest-officer shall not operate to revive any right which may have been extinguished or modified by a proclamation under section 28.

XIV of 1948.]

(Chapter III.—Rights in Forests.—Sections 19—22.)

CHAPTER III.

RIGHTS IN FORESTS.

19. When a notification has been published in respect of any forest under sub-section (2) of section 6 or under section 7 or under section 11, the control of such forest shall be vested in the Regional Forest-officer, who shall forthwith proceed to demarcate it.

Control and demarcation of vested forest.

20. (1) A Forest Settlement-officer shall be appointed by the ¹[State] Government in respect of every forest of which the control is vested in a Regional Forest-officer by a notification under sub-section (2) of section 6 or under section 7 or under section 11, and may be appointed in respect of any controlled forest on the application made in this behalf to the ¹[State] Government by its owner.

Appointment of Forest Settlement-officer.

(2) Such appointment shall be made by a notification specifying in such notification, as nearly as may be possible, the situation and limits of such forest.

21. After the issue of a notification under section 20, no right shall be acquired in or over the land comprised in such notification, except by succession or under grant or contract in writing made or entered into, with the previous sanction of the ¹[State] Government, by or on behalf of the owner or some person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose, and cutting, conversion or removal of timber or the collection, manufacture or removal of other forest-produce, shall be made in such land except in accordance with such rules, if any, as may be made by the ¹[State] Government in this behalf.

Bar of accrual of rights.

22. (1) The Forest Settlement-officer shall publish in the neighbourhood of the forest in respect of which he has been appointed, a proclamation in Bengali and, if any other language has been prescribed in this behalf for the local area in which such forest is situated, also in such other language—

Proclamation by Forest Settlement-officer.

- (a) specifying, as nearly as possible, the situation and limits of such forest;
- (b) explaining the measures proposed for, and the consequences which will ensue on, the conservation of such forest; and
- (c) requiring every person who claims any right, other than a right of ownership, over such forest or over any forest-produce from such forest, to give to

¹See footnote 3 on p. 449, *ante*.

(Chapter III.—Rights in Forests.—Sections 23—25.)

such Forest Settlement-officer, within a period of not less than three months to be stated in the proclamation, particulars, either in writing or by word of mouth, of such right and the amount and nature of the compensation, if any, claimed in respect thereof.

(2) The Forest Settlement-officer shall take down in writing all statements made by word of mouth under clause (c) of sub-section (1).

**Inquiry
by Forest
Settle-
ment-
officer.**

23. (1) The Forest Settlement-officer shall at some convenient place inquire into the existence of any rights which are claimed under clause (c) of sub-section (1) of section 22 or which may be ascertained by him from any other source.

(2) The Forest Settlement-officer shall give a hearing to the Regional Forest-officer or an officer authorised by such Regional Forest-officer in writing, in this behalf, to satisfy himself as to the necessity of modifying or extinguishing any right in the interests of the conservation of the forest.

**Powers of
Forest
Settle-
ment-
officer.**

24. For the purpose of such inquiry, the Forest Settlement-officer may exercise the following powers, that is to say:—

(a) power to enter, by himself or by any officer authorised by him for the purpose, upon any land, and to survey, demarcate and make a map of the same; and

(b) the powers of a Civil Court in the trial of suits.

**Specifi-
cation and
modifi-
cation of
rights.**

25. (1) After completion of the inquiry under section 23, the Forest Settlement-officer shall, by an order in writing—

(a) record the nature of the rights existing at the time of the notification under section 20, and

(b) direct the modification or extinction of any such right, other than a right of ownership, in the interests of the conservation of the forest.

(2) When the Forest Settlement-officer directs under clause (b) of sub-section (1) the modification or extinction of any right, he shall, unless the person whose rights are affected has come to an agreement as to the amount of compensation payable to him, determine what compensation shall be awarded to such person, and the amount of any compensation payable under this sub-section to any such person shall be paid in the prescribed manner, in the case where the forest to which such right relates is a controlled forest, by the owner of such forest, and in the case where such forest is a vested forest, by the Regional Forest-officer in whom the

XIV. of 1948.]

(Chapter III.—Rights in Forests.—Sections 26—28.)

control of such forest is vested under this Act and every payment so made by the Regional Forest-officer shall be recouped from the profits of the vested forest to which such right relates as part of the cost of management of such forest.

26. (1) An appeal may be presented against any order made under section 25 within ninety days from the date of such order to the Commissioner of the Division by an owner of a forest or by a Regional Forest-officer or by any person who has given particulars of his claims under sub-section (1) of section 22. Appeals.

(2) Every such appeal shall be made by a petition in writing and shall be heard in accordance with the procedure for the time being applicable to the hearing of appeals in matters relating to land-revenue.

(3) The order of the Commissioner on such appeal shall, subject to the provisions of sub-section (4), be final.

(4) An application for revision shall lie to the Board of Revenue from an order of the Commissioner passed in appeal under this section if it is presented within thirty days from the date of such order.

27. The ¹[State] Government, or any person who has made a claim under this Act, may appoint any person to appear, plead and act on its or his behalf before the Forest Settlement-officer, or any appellate or revisional authority in the course of any inquiry, appeal or revision under this Act or before any arbitrator appointed to determine any compensation payable under sub-section (5) of section 10. Pleadings.

28. (1) When the time within which appeals against orders under section 25 may be made has expired and, when any such appeal has been made under section 26, the time within which applications for revision of any order passed in such appeal may be made has also expired and all applications for revision under sub-section (4) of section 26 have been disposed of, the Forest Settlement-officer shall issue another proclamation specifying the rights which may be exercised in respect of the forest regarding which any such order under section 25 has been made and also specifying the date with effect from which all rights in respect of such forest which are not specified in such proclamation shall be extinguished. Extinction of rights.

(2) A translation of such proclamation in Bengali and, if any other language has been prescribed in this behalf for the local area in which such forest is situated, also in such other language shall be published in the neighbourhood of such forest before the date so specified in such proclamation.

¹See footnote 3 on p. 449, ante.

(Chapter IV.—Penalties and Procedure.—Sections 29, 30.)

(3) With effect from the date so specified in such proclamation all rights in respect of such forest not specified in such proclamation shall be extinguished.

CHAPTER IV.

PENALTIES AND PROCEDURE.

Penalties
for breach
of rules.

29. (1) Any person who,—

- (a) fells, girdles, lops, taps, or burns any tree in a controlled or vested forest or strips off the bark or leaves from or otherwise damages, any such tree,
- (b) quarries any stone, or burns any lime or charcoal, or collects, subjects to any manufacturing process, or removes any forest-produce from a controlled or vested forest,
- (c) breaks up or clears for cultivation or any other purpose any land in a controlled or vested forest,
- (d) sets fire to a controlled or vested forest, or kindles a fire without taking all reasonable precautions to prevent its spreading to any portion of such forest, or
- (e) permits cattle to damage any tree in a controlled or vested forest,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(2) Any person contravening any rule made under this Act, for the contravention of which no special penalty is provided, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Imposi-
tion of col-
lective
fine on
the in-
habitants
in certain
cases.

30. (1) If it is proved to the satisfaction of the District Magistrate that in any vested forest—

- (a) any cattle have been permitted to trespass,
- (b) any trees have been felled, girdled, lopped, tapped, burnt, or otherwise damaged,
- (c) any other forest-produce has been burnt or removed,
or
- (d) any land has been broken up for any purpose,

otherwise than in the exercise of any right in or over such forest with intent to cause detriment to the conservation of such forest, and if the District Magistrate is satisfied after enquiry that the inhabitants of any local area are concerned in the commission of any such offences or are in any way

XIV of 1948.]

(Chapter IV.—Penalties and Procedure.—Sections 31, 32.)

assisting persons in committing such offences, the District Magistrate may, by order in writing in which shall be specified the reasons for making such order, impose on the inhabitants of such area a collective fine which may extend to five hundred rupees or three times the value estimated by him of any forest-produce damaged, whichever is greater, and may, after such further enquiry, as he deems necessary, apportion such fine amongst such inhabitants and such apportionment shall be made according to the respective means of such inhabitants.

(2) Every order imposing a collective fine under sub-section (1) shall be forthwith published in the local area in such manner as the District Magistrate considers best calculated to bring the order to the notice of the inhabitants of the area concerned.

(3) The District Magistrate may exempt any person or class or section of such inhabitants from liability to pay any portion of such fine.

(4) The portion of such fine payable by any person may be recovered from him as a fine or as a public demand under the Bengal Public Demands Recovery Act, 1913.

(5) Every apportionment of collective fine made under sub-section (1) shall be subject to revision by the Commissioner of the Division on application made in that behalf to him by any person affected by such apportionment within thirty days from the date on which such apportionment is made and the decision of the Commissioner thereon shall be final.

Ben. Act
III of
1913.

31. No act shall be an offence for the purposes of sub-section (1) of section 29 if it is done—

- (a) in the exercise of any right in or over such forest, or
- (b) in respect of a vested forest, with the permission in writing of a Forest-officer, or
- (c) in respect of a controlled forest, with the permission in writing of the owner thereof or of his authorised agent, or
- (d) in accordance with rules made under this Act.

Nothing in sub-section (1) of section 29 to prohibit acts done in certain cases.

32. (1) When there is reason to believe that a forest-offence has been committed in respect of any forest-produce, such produce together with all tools, boats, motor vehicles, carts or cattle used in committing any such offence, may be seized by any Forest-officer or Police-officer.

Seizure of property liable to confiscation.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a

(Chapter IV.—Penalties and Procedure.—Sections 33—35.)

report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that, when the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

Power to
release
property
seized
under
section 32.

33. Any Forest-officer of a rank not inferior to that of a Ranger, or any Police-officer of a rank not inferior to that of a Sub-Inspector, who, or whose subordinate, has seized any tools, boats, motor vehicles, carts or cattle under section 32, may release the same on the execution by the owner thereof of a bond for the production of the property so released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

Informa-
tion to
the Magis-
trate and
procedure
there-
upon.

34. The Regional Forest-officer may cause information to be given to a Magistrate regarding any forest-offence which he has reason to believe to have been committed in respect of any forest-produce; and upon receipt of any such information, the Magistrate shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

Notice to
claimants
of seized
forest-
produce.

35. (1) If a Regional Forest-officer has not caused information to be given to a Magistrate under section 34 in respect of any forest-produce seized under sub-section (1) of section 32, he shall, if there is any doubt as to the person who is entitled to such produce, cause a notice to be published in such manner as may be prescribed containing a description of such produce and requiring any person who may claim the same to present a written statement of his claim to him within such period as may be specified in such notice.

(2) If only one such statement of claim is presented in respect of any such forest-produce, the Regional Forest-officer shall, after making such inquiry as he thinks fit and recording his reasons in writing, either reject the claim or deliver the produce to the claimant.

(3) If more than one such statement of claim is presented, the Regional Forest-officer may, after making such inquiry as he thinks fit and after recording his reasons in writing, either deliver the forest-produce to such of the persons as he considers to be entitled thereto or refer the claimants to the Civil Court and retain such produce pending receipt of an order from the Civil Court for its disposal.

XIV of 1948.]

(Chapter IV.—Penalties and Procedure.—Sections 36—38.)

(4) Any person whose claim has been rejected under this section may, within three months from the date of rejection of such claim, institute a suit to recover possession of the forest-produce claimed by him; but no person shall be entitled to recover any compensation or costs against the ¹[State] Government, or against any Forest-officer, on account of rejection of such claim, or on account of the detention or removal of any forest-produce, or the delivery thereof to any other person under this section.

(5) No such forest-produce shall be subject to any process of any Civil, Criminal or Revenue Court until it has been delivered, or a suit has been instituted as provided in this section.

36. If no statement of claim is presented in respect of any such forest-produce after a notice has been published under sub-section (1) of section 35, or if a person whose claim has been rejected under that section omits to institute a suit under sub-section (4) thereof, the ownership of such forest-produce shall vest in the ¹[State] Government free from all encumbrances, or, when such forest-produce has been delivered to any person under sub-section (3) of that section, in such person free from all encumbrances not created by such person.

Disposal of un-claimed forest-produce.

37. (1) Any forest-produce in respect of which a forest-offence has been committed and information has been given to a Magistrate under section 34 shall, on the conclusion of the trial for such offence, be made over to the owner of the forest from which it was derived or to any other person whom the Magistrate deems to be entitled to the same:

Disposal of seized property after information has been given under section 34.

Provided that, if it is not known from which forest such produce was derived, such forest-produce and all tools, boats, motor vehicles, carts and cattle used in committing such forest-offence shall be liable to confiscation.

(2) Such confiscation may be in addition to any other punishment which may be awarded under this Act for such offence.

38. When the trial of any forest-offence is concluded, any forest-produce in respect of which such offence has been committed shall, if it has been confiscated, be taken charge of by a Forest-officer.

Disposal of confiscated property on conclusion of trial.

¹See footnote 3 on p. 449, *ante*.

(Chapter IV.—Penalties and Procedure.—Sections 39—44.)

Procedure when offender cannot be found.

39. When the offender cannot be found, the Magistrate may, if he finds that an offence has been committed, order the property in respect of which the offence has been committed to be confiscated and taken charge of by the Regional Forest-officer, or to be made over to the person whom the Magistrate deems to be entitled to the same:

Provided that no such order shall be made until the expiry of one month from the date of seizing such property, or without hearing the person, if any, claiming any right thereto, and the evidence if any, which he may produce in support of his claim.

Procedure as to perishable property seized under section 32.

40. The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under section 32 and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold.

Appeal from orders under section 37 or section 39.

41. The officer who made the seizure under section 32, or any of his official superiors, or any person claiming to be interested in the property so seized, may, within one month from the date of any order passed by the Magistrate under section 37 or section 39, appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

Property when to vest in Government.

42. When an order for the confiscation of any property has been passed under section 37 or section 39, as the case may be, and the period limited by section 41 for an appeal from such order has expired, and no such appeal has been preferred, or when, on such an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the ¹[State] Government free from all encumbrances.

Saving of power to release property seized.

43. Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the ¹[State] Government from directing at any time the immediate release of any property seized under section 32.

Punishment for wrongful seizure.

44. Any Forest-officer or Police-officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

¹See footnote 3 on page 449, *ante*.

XIV of 1948.]

(Chapter IV.—Penalties and Procedure.—Sections 45—49.)

Act XLV
of 1860.

45. Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code—

Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary marks.

(a) knowingly counterfeits upon any timber or standing tree in a controlled or vested forest a mark used by Forest-officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person, or

(b) alters, defaces or obliterates any such mark placed on a tree or on timber in a controlled or vested forest by or under the authority of a Forest-officer, or

(c) alters, moves, destroys or defaces any boundary mark of any forest or waste-land to which the provisions of this Act apply or are applied,

shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

46. (1) Any Forest-officer or Police-officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest offence punishable with imprisonment for one month or upwards under this Act.

Power to arrest without warrant.

(2) Every officer making an arrest under this section shall, without unnecessary delay and subject to the provisions of this Act as to release on bond, take or send the person arrested before the Magistrate having jurisdiction in the case or to the officer-in-charge of the nearest police-station.

47. Any Forest-officer of a rank not inferior to that of a Ranger, who or whose subordinate, has arrested any person under the provisions of section 46, may release such person on his executing a bond to appear, if and when so required, before the Magistrate having jurisdiction in the case or before the officer-in-charge of the nearest police-station.

Power to release on a bond a person arrested.

48. Every Forest-officer and Police-officer shall prevent, and may interfere for the purpose of preventing the commission of any forest-offence.

Power to prevent commission of offence.

49. The District Magistrate or any Magistrate of the first class specially empowered in this behalf by the ¹[State] Government may try summarily, under the Code of Criminal Procedure, 1898, any forest-offence punishable with imprisonment for a term not exceeding six months, or with fine not exceeding five hundred rupees, or with both.

Power to try offences summarily.

Act V
of 1898.

¹See footnote 3 on page 449, ante.

(Chapter IV.—Penalties and Procedure.—Sections 50—52.)

Power of Court to order payment of rewards out of fine.

50. Whenever a Court imposes a fine under this Act or confirms in appeal under this Act a sentence of fine or a sentence of which fine forms a part, for a forest-offence other than an offence specified in sub-section (1) of section 6 or section 44, the Court may, when passing judgment, order any portion of the fine recovered to be paid to the person whose information led to the detection of the offence.

Power to compound offences.

51. (1) The ¹[State] Government may, by notification empower a Forest-officer—

(a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence, other than an offence specified in sub-section (1) of section 6, section 44 or section 45, a sum of money, not exceeding fifty rupees, by way of compensation for the offence which such person is suspected to have committed; and

(b) when any property of such person has been seized, to release the same.

(2) On the payment of such sum of money to such officer, the suspected person, if in custody, shall be discharged, the property, if any, of such person seized shall be released, and no further proceedings shall be taken against such person or property.

(3) If the forest-offence has been committed in respect of a controlled forest, the amount of any compensation paid to a Forest-officer empowered under sub-section (1) to accept such compensation, or such part of such amount as the Forest-officer deems equitable in the circumstances, may, at the discretion of the Forest-officer, be paid to the owner of the controlled forest; but the amount of any compensation not so paid to the owner of a controlled forest and the amount of any compensation paid to such a Forest-officer if the forest-offence has been committed in respect of a vested forest shall be paid into the revenues of the ²[State].

(4) A Forest-officer shall not be empowered under this section unless he is a Forest-officer of a rank not inferior to that of a Ranger.

Onus of proof.

52. Notwithstanding anything contained in any other Act, when in any area in respect of which the ¹[State] Government has made rules under clause (b) of sub-section (2) of section 41 of the Indian Forest Act, 1927, any person is found to be moving forest-produce without a pass from an officer duly authorised to issue the same, the burden of proof that such person has not committed an offence under this Act in respect of such forest-produce shall lie on him. XVI of 1927.

¹See footnote 3 on p. 449, *ante*.

²This word within square brackets was substituted for the word "Province" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

XIV of 1948.]

(Chapter V.—Regional Forest-officers.—Sections 53—56.)

CHAPTER V.

REGIONAL FOREST-OFFICERS.

53. (1) The ¹[State] Government may invest any Regional Forest-officer with all or any of the following powers that is to say:—

State Government may invest Regional Forest-officers with certain powers.

- (a) power to enter upon any land, or to authorise any officer to enter thereon with servants and workmen, and to survey, demarcate and make a map of the same;
- (b) the powers of a Civil Court to compel the attendance of witnesses and the production of documents and material objects;
- (c) power to issue a search-warrant under the Code of Criminal Procedure, 1898; and
- (d) power to hold an enquiry into forest-offences, and, in the course of such enquiry, to receive and record evidence.

Act V of 1898.

(2) Any evidence recorded under clause (d) of subsection (1) shall be admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person.

54. It shall be lawful for any officer authorised either generally or specially in this behalf by the Regional Forest-officer to enter with his subordinates and servants and workmen at any time upon any part of a controlled forest for the purpose of ascertaining whether there has been any violation of an approved working plan and to do any other acts which are in his opinion necessary for carrying out the purposes of this Act.

Power of officers.

55. All Forest-officers shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Forest-officers deemed public servants.

Act XLV of 1860.

56. No suit shall lie against any public servant for anything done by him in good faith under this Act.

Indemnity for acts done in good faith.

¹See footnote 3 on p. 449, *ante*.

[West

(Chapter VI.—Rules.—Section 57.)

CHAPTER VI.

RULES.

Power to
make
rules.

57. (1) The ¹[State] Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the ¹[State] Government may make rules to provide for all or any of the following matters, namely:—

- (a) the cutting, sawing, conversion and removal of trees and timber, and the collection, manufacture and removal of forest-produce from controlled or vested forests in notified areas;
- (b) the granting of licenses to the inhabitants of towns and villages in the vicinity of controlled or vested forests to take trees, timber or other forest-produce for their own use, and the production and return of such licenses by such persons;
- (c) the granting of licenses to persons for selling or removing trees or timber or other forest-produce from controlled or vested forests for the purposes of trade, and the production and return of such licenses by such persons;
- (d) the payments, if any, to be made by the persons mentioned in clauses (b) and (c) for permission to cut such trees, or to collect and remove such timber or other forest-produce;
- (e) the other payments, if any, to be made by them in respect of such trees, timber and produce, and the places where such payment shall be made;
- (f) the examination of forest-produce passing out of controlled or vested forests in notified areas;
- (g) the clearing and breaking up of land for cultivation or other purposes in controlled or vested forests in notified areas;
- (h) the protection from fire of timber lying in controlled or vested forests in notified areas;
- (i) the cutting of grass and pasturing of cattle in controlled or vested forests in notified areas;
- (j) hunting, shooting, fishing, poisoning water and setting traps or snares in controlled or vested forests, and the killing or catching of elephants in such forests in areas in which the Elephants' Preservation Act, 1879, is not in force;

VI of 1879.

¹See foot-note 3 on p. 449, ante.

XIV of 1948.]

(Chapter VI.—Rules.—Section 57.)

- (k) the powers and duties of Forest-officers under this Act;
- (l) the procedure of an Appellate Committee referred to in clause (1) of section 2 and the manner in which an owner of a private forest shall be selected as a member of such Appellate Committee;
- (m) the procedure of a Board appointed to perform the functions of a Forest Settlement-officer referred to in clause (9) of section 2;
- (n) the manner in which the working plan referred to in sub-section (1) of section 3 shall be prepared, the consultation referred to in sub-sections (2) and (3) of that section shall be made and the copy of the order referred to in sub-section (4) of that section shall be served;
- (o) the manner in which the approved working plan shall be sent under sub-section (2) of section 4 and the consultation referred to in sub-section (3) of that section shall be made;
- (p) the grant of loans referred to in sub-section (1) of section 8, the manner of making applications for such loans under sub-section (2) of that section, the manner in which such applications shall be considered and the recovery of such loans and the interest and costs in respect thereof under sub-section (4) of that section;
- (q) the manner in which the consultation referred to in sub-sections (1) and (2) of section 9 shall be made and copies of the orders passed under the said sub-sections shall be served;
- (r) the manner in which the copy of a notification issued under sub-section (1) of section 10 shall be served under sub-section (2) of that section, the determination by the Forest Settlement-officer of the matters specified in clause (c) of sub-section (4) of that section, the determination of compensation referred to in sub-section (5) of that section, the maximum amount of an award against which no appeal shall lie under clause (v) of that sub-section, the manner of payment of compensation under sub-section (6) of that section, and the manner in which the consultation referred to in sub-section (9) of that section shall be made, a copy of the order referred to in that sub-section shall be served and the working plan referred to in that sub-section shall be prepared;
- (s) the apportionment of rent referred to in clause (i) of section (1) of section 12;

(Chapter VI.—Rules.—Section 58.)

- (t) the manner in which the cost of management referred to in sub-section (1) of section 16 and the respective shares of the owners of a vested forest and the net profits in respect of such forest referred to in sub-section (5) of that section shall be determined or calculated and the copy of the statement referred to in sub-section (6) of that section shall be served;
 - (u) the manner in which the cess referred to in sub-section (1) of section 17 may be imposed and the costs and expenses referred to in sub-section (2) of that section shall be determined;
 - (v) the manner in which the working plan referred to in clause (a) of the first proviso to sub-section (1) of section 18 shall be prepared;
 - (w) the clearing of land for cultivation or for any other purpose and the cutting, conversion and the removal of timber and the collection, manufacture and removal of other forest-produce referred to in section 21;
 - (x) the language other than Bengali referred to in sub-section (1) of section 22 and in sub-section (2) of section 28;
 - (y) the manner in which the compensation referred to in sub-section (2) of section 25 shall be paid;
 - (z) the manner in which the notice referred to in sub-section (1) of section 35 shall be published;
 - (zz) the manner in which the forest-produce referred to in sub-section (3) of section 60 shall be sold; and
 - (zzz) the manner of service of notices issued under this Act.
- (3) In making any rule under this section the ¹[State] Government may provide that a contravention thereof shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Applica-
tion of
rules made
under
sections
41 and 42
of the
Indian
Forest
Act, 1927,
to transit
of forest
produce
from pri-
vate
forests.

58. All rules made by the ¹[State] Government to regulate the transit of timber and other forest-produce under sections 41 and 42 of the Indian Forest Act, 1927, for the time being in force, shall apply so far as may be to the transit of all timber and other forest-produce from any private forest to which any of the provisions of this Act apply.

XVI of
1927.

¹See footnote 3 on p. 449, *ante*.

XIV of 1948.]

(Chapter VII.—Miscellaneous.—Sections 59—61.)

CHAPTER VII.

MISCELLANEOUS.

59. Notwithstanding anything elsewhere contained in this Act, the ¹[State] Government may, on application made in this behalf in writing by the owner of any private forest or of any waste-land referred to in sub-section (I) of section 11 or, if there be more than one owner thereof, by the owners of shares therein amounting in the aggregate to at least one-half thereof, to the Collector of the district in which such forest or land is situated, by a notification, apply the provisions of this Act applicable to vested forests, subject to such restrictions or conditions as may have been determined by an agreement between the said Collector and such person or persons, to such forest or land and thereupon such forest or land shall be managed on behalf of such owner or owners as a vested forest in accordance with such provisions by a Regional Forest-officer specified in this behalf by the ¹[State] Government.

Conservation of forest or afforestation of land at the request of owners.

60. (1) All money payable to a Regional Forest-officer under this Act or under any rule made under this Act, other than money payable in respect of the cost of management of a vested forest, and all money payable to such officer on account of the price of any forest-produce or on account of expenses incurred in the execution of this Act in respect of such produce shall, if not paid when due, be recoverable as a public demand under the Bengal Public Demands Recovery Act, 1913.

Recovery of money due to Regional Forest-officer and lien on forest produce for such money.

Ben. Act
III of
1913.

(2) When any such money is payable for or in respect of any forest-produce, the amount thereof shall be deemed to be a first charge on such produce, and such produce may be taken possession of by a Regional Forest-officer until such amount has been paid.

(3) If such amount is not paid when due, the Regional Forest-officer may sell such produce in the prescribed manner, and after payment of the costs of the sale the proceeds thereof shall be applied first in discharging such amount.

(4) The surplus, if any, if not claimed within one year from the date of the sale by the person entitled thereto, shall be forfeited to the ²[Government].

61. Whenever it appears to the ¹[State] Government that any land is required for any of the purposes of this Act, such land shall be deemed to be needed for a public purpose within the meaning of section 4 of the Land Acquisition Act, 1894.

Land required under this Act to be deemed to be needed for a public purpose under the Land Acquisition Act, 1894.

of 1894.

¹See foot-note 3 on p. 449, *ante*.

²See footnote 2 on p. 451, *ante*.

[West Ben. Act XIV of 1948.]

(Chapter VII.—Miscellaneous.—Sections 62—64.)

Powers of
the Regional
Forest-officer
and control of
the State
Government.

62. Subject to the provisions of this Act and to any rules made thereunder, every Regional Forest-officer—

- (a) may do all such things requisite for the proper management of the forest the control of which has been vested in him under this Act as the owner of such forest might do for its management, and
- (b) shall in the exercise of his powers and in the performance of his duties in relation to such forest be guided by such orders and instructions as may, from time to time, be issued in this behalf by the¹[State] Government.

Repeal
and
savings.

63. (1) Sections 35, 36, 37 and 38 of the Indian Forest Act, 1927, in their application to West Bengal are hereby repealed. XVI of 1927.

(2) Such repeal shall not affect anything done or suffered or any obligation or liability accrued or any penalty incurred or any proceedings commenced before the commencement of this Act.

(3) Any private forest or waste-land held under the control of a Forest-officer under section 36 of the Indian Forest Act, 1927, immediately before the commencement of this Act shall, on such commencement, notwithstanding the repeal of the said section, continue to be so held under the control of a Regional Forest-officer under the provisions of this Act applicable to a vested forest and shall be deemed to be a vested forest for the purposes of this Act.

(4) All lands which immediately before the commencement of this Act were being managed as a reserved or a protected forest under the provisions of section 38 of the Indian Forest Act, 1927, shall, on such commencement, notwithstanding the repeal of the said section, continue to be managed under the provisions of section 59 of this Act as a vested forest subject to such terms as may have been mutually agreed upon between the owner or owners of such lands and the Collector, and the application made under sub-section (1) of the said section 38 by the owner or owners of any such land shall be deemed to be an application made under the said section 59.

Repeal of
Ben. Act
XI of 1945.

64. The Bengal Private Forests Act, 1945, is hereby repealed. Ben. Act XI of 1945.

¹See footnote 3 on p. 449, *ante*.

West Bengal Act XXI of 1948

THE WEST BENGAL LAND DEVELOPMENT AND PLANNING ACT, 1948.¹

AMENDED .. { West Ben. Act XXIX of 1951.
West Ben. Act XXXIII of 1955.

ADAPTED .. The Adaptation of Laws Order, 1950.

[7th October, 1948.]

An Act to provide for the acquisition and development of land for public purposes.

WHEREAS it is expedient to provide for the acquisition and development of land for public purposes;

Renumber the Explanation to sub-section (2) of section 1 as Explanation I and after the Explanation as so numbered, add the following further Explanation, namely:—

“Explanation II.—Notwithstanding any amendment made, after the commencement of this Act, to clause (b) of section 2 of the Calcutta Improvement Act, 1911, this Act shall apply and be deemed always to have applied to the area which was comprised within the municipality of Tollygunge immediately before the issue of a notification under section 594 of the Calcutta Municipal Act, 1951.”

Ben. Act
V of 1911.

West Ben.
Act
XXXIII of
1951.

title,
t and
ence-

(Renumbered and added by West Ben. Act XXIX of 1957,
section 2.)

West Ben.
Ord. II of
1948.

(3) It shall come into force on the date on which the West Bengal Land Development and Planning Ordinance, 1948, ceases to operate.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(a) the expressions “land”, “Collector” and “Company” respectively have the same meanings as in the Land Acquisition Act, 1894;

I of 1894.

(b) “development scheme” means a scheme for the development of land for any public purpose;

(c) “notified area” means an area declared under sub-section (1) of section 4 to be a notified area;

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 23rd March, 1948, Part IV, pages 343-346; and for the *Assembly Proceedings*, see the Proceedings of the meeting of the West Bengal Legislative Assembly held on the 20th September, 1948.

²This *Explanation* within square brackets was added by section 2 of the West Bengal Land Development and Planning (Amendment) Act, 1951 (West Ben. Act XXIX of 1951), and shall be deemed always to have been added.

(Sections 3, 4.)

(d) "public purpose" includes—

- (i) the settlement of immigrants who have migrated into the ¹[State] of West Bengal on account of circumstances beyond their control,
- (ii) the establishment of towns, model villages and agricultural colonies,
- (iii) the creation of better living conditions in urban and rural areas, and
- (iv) the improvement and development of agriculture, forestry, fisheries and industries;

²[but does not include a purpose of the Union;]

(e) "rules" means rules made under this Act.

Appoint-
ment of the
prescribed
authority.

3. The ³[State] Government may appoint, in accordance with the rules, an authority (hereinafter referred to as the prescribed authority) for carrying out the purposes of this Act.

Declara-
tion of
notified
area.

4. (1) The ³[State] Government may, by notification in the *Official Gazette*, declare any area specified in the notification to be a notified area if it is satisfied that any land in such area is needed or is likely to be needed for any public purpose and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the locality in such manner as he may think fit.

(2) Thereupon it shall be lawful for any person either generally or specially authorised by such Government in this behalf and for his servants and workmen,—

to enter upon and survey and take levels of any land in such area;

to dig or bore into the subsoil;

to do all other acts necessary to ascertain whether the land is suitable for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

¹The word "State" within square brackets was substituted for the word "Province" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²These words within square brackets were added by section 2 of the West Bengal Land Development and Planning (Amendment) Act, 1955 (West Ben. Act XXIII of 1955).

³The word "State" within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

XXI of 1948.]

(Sections 4A, 5.)

to mark such levels, boundaries and line by placing marks and cutting trenches; and

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that the person so authorised shall, at the time of such entry, pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector ' * * ', and such decision shall be final.

24A. (1) Any person interested in any land within a notified area may, within thirty days from the date of issue of the notification specifying the area to be a notified area, object to the acquisition of the land in which he is interested. Hearing of objections.

(2) Every objection under sub-section (1) shall be made to the Collector in writing and the Collector shall give the objector an opportunity of being heard and shall, after hearing all objections and making such further inquiry, if any, as he thinks necessary, submit the case to the State Government together with the record of the proceedings held by him and a report containing his recommendations on the objections.

5. (1) The ³[State] Government may direct the prescribed authority, or, if it so thinks fit in any case, authorise any Company or local authority, to prepare, in accordance with the rules, a development scheme in respect of any notified area and thereupon such scheme shall be prepared accordingly and submitted, together with such particulars as may be prescribed by the rules, to the ⁵[State] Government for its sanction: Preparation and sanctioning of development scheme.

⁴[Provided that no scheme shall be necessary for acquisition of land for the public purpose specified in sub-clause (i) of clause (d) of section 2.]

¹The words "or other chief revenue officer of the district" were omitted by section 3 of the West Bengal Land Development and Planning (Amendment) Act, 1955 (West Ben. Act XXIII of 1955).

²Section 4A was inserted by section 4, *ibid.*

³See footnote 3 on p. 484, *ante*.

⁴This proviso within square brackets was added by section 5(a) of the West Bengal Land Development and Planning (Amendment) Act, 1955 (West Ben. Act XXIII of 1955).

486—

section 5, after sub-section (2), add the following sub-section, namely:—

“(3) Notwithstanding anything contained in the foregoing sub-sections or any rules made under this Act or in any judgment, decree or order of any court, any development scheme prepared, approved or sanctioned by the State Government before the commencement of the West Bengal Land Development and Planning (Amendment) Act, 1957 shall be deemed to be and to have always been a scheme duly sanctioned under sub-section (2).”

(Added by West Ben. Act XXIX of 1957, section 3.)

[No. 2, dated the 1st August, 1958.]

section 4, be made by the ¹[State] Government.

³(1a) When the State Government is satisfied, after taking into consideration any report submitted under sub-section (2) of section 4A, that any land in the notified area is needed for the public purpose specified in sub-clause (i) of clause (d) of section 2, a declaration to the effect that such land is needed for the said purpose shall, unless already made in pursuance of section 7, be made by the State Government.

(2) The declaration shall be published in the *Official Gazette*, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

⁴(3) When the State Government makes a declaration under sub-section (1) or sub-section (1a), it may, if it thinks fit, insert in the declaration a statement that the mines of coal, iron-stone, slate or other minerals lying under the land or any particular portion of the land are not needed for the purpose for which the land is being acquired.

Special
provision
of
urgency.

7. In cases of urgency, if in respect of any notified area the ¹[State] Government is satisfied that the preparation of a development scheme is likely to be delayed, the ¹[State] Government may, at any time, make a declaration under section 6, in respect of such notified area or any part thereof though no development scheme has either been prepared or sanctioned under section 5.

¹See footnote 3 on p. 484, ante.

²These words within square brackets were substituted for the words “may be sanctioned” by section 5(b) of the West Bengal Land Development and Planning (Amendment) Act, 1955 (West Ben. Act XXIII of 1955).

³Sub-section (1a) was inserted by section 6(a), *ibid.*

⁴Sub-section (3) was added by section 6(b), *ibid.*

XXI of 1948.]

(Section 8.)

I of 1894. 8. ¹[(1)] ²[After making a declaration under section 6] the ³[State] Government may acquire the land and thereupon the provisions of the Land Acquisition Act, 1894 (hereinafter in this section referred to as the said Act), shall, so far as may be, apply:

Application of section I of 1894 subject to this special provision for compensation.

Provided that—

- (a) if in any case the ³[State] Government so directs, the Collector may, at any time after a declaration is made under section 6, take possession, in accordance with the rules, of any *beel*, *baor*, tank or other watery area, or ⁴[any waste or arable land] in respect of which the declaration is made and thereupon such land shall vest absolutely in the ⁵[Government] free from all encumbrances;

(1.)

... included subject to the following condition, that is to say,—

if such market value ⁷[in relation to land acquired for the public purpose specified in sub-clause (i) of clause (d) of section 2] exceeds by any amount the market value of the land on the 31st day of December, 1946, on the assumption that the land had been at that date in the state in which it in fact was on the date of publication of the said notification, the amount of such excess shall not be taken into consideration.

¹Section 8 of the Act was renumbered as sub-section (1) of the section by section 7 of the West Bengal Land Development and Planning (Amendment) Act, 1955 (West Ben. Act XXIII of 1955).

²These words within square brackets were substituted for the words beginning with "A declaration" and ending with "such declaration", by section 7(1)(a), *ibid*.

³See foot-note 3 on p. 484, *ante*.

⁴These words within square brackets were substituted for the words "any other waste or arable land" by section 7(1)(b) of the West Bengal Land Development and Planning (Amendment) Act, 1955 (West Ben. Act XXIII of 1955).

⁵The word "Government" within square brackets was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁶The *Explanation* to clause (a) of the proviso to sub-section (1) of section 8 was omitted by section 7(1)(c) of the West Bengal Land Development and Planning (Amendment) Act, 1955 (West Ben. Act XXIII of 1955).

⁷These words within square brackets were inserted and shall be deemed always to have been inserted by section 7(1)(d), *ibid*.

[West Ben. Act

(Sections 9—11.)

¹(2) When the amount of compensation has been determined under sub-section (1), the Collector shall make an award in accordance with the principles set out in section 11 of the said Act, but no amount referred to in sub-section (2) of section 23 of the said Act shall be included in the award.

Power to dispose of land acquired under the Act.

9. (1) Where the State Government decides to lease or sell any land acquired in pursuance of this Act, the person or persons from whom the land was so acquired shall, in such manner as the State Government may direct, be offered a prior right to take on lease or to purchase the land on such terms and conditions as may be determined by the State Government.

(2) If, in any case, two or more persons claim to exercise a right offered under sub-section (1), the right shall be exercisable by such of the claimants as the State Government may determine after such inquiry as it thinks fit.

Execution of development scheme and disposal of land.

10. (1) The ³[State] Government may direct the prescribed authority to execute any development scheme sanctioned under sub-section (2) of section 5 or cause it to be executed in accordance with the rules and upon the execution of the scheme as so directed the lands comprised therein shall be disposed of by the Collector in such manner as may be directed by the ³[State] Government.

(2) If the ³[State] Government so thinks fit, it may also empower a Company or a local authority to execute, at its own cost, any such development scheme and to dispose of the lands comprised therein on such terms and conditions including conditions relating to the manner of disposal of land as may be settled by the ¹[State] Government and embodied in an agreement to be entered into by the ¹[State] Government and the Company or local authority, as the case may be.

Withdrawal of power from Company or local authority to execute development scheme or to dispose of land.

11. If, at any time, the ¹[State] Government 'is satisfied that any of the terms or conditions contained in an agreement referred to in sub-section (2) of section 10 is not being complied with, it may, by order served in accordance with the rules on the Company or local authority, as the case may be, withdraw the power conferred on it to execute any development scheme or to dispose of the lands comprised therein or both and may thereafter make such arrangement in that behalf as it may deem fit and proper.

¹Sub-section (2) was added by section 7(2) of the West Bengal Land Development and Planning (Amendment) Act, 1955 (West Ben. Act XXIII of 1955).

²This section 9 was substituted for the original section 9 by section 8, *ibid.*

³See footnote 1 on page 484, *ante.*

XXI of 1948.]

(Sections 12—15.)

12. No suit, prosecution, or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder. Protection of action taken under this Act.

13. The ¹[State] Government may, by notification in the *Official Gazette*, direct that any or all of the powers conferred upon it by this Act shall be exercisable also by such authority subject to such conditions, if any, as may be specified in the notification. Delegation of powers.

14. (1) The ¹[State] Government may make rules for carrying out the purposes of this Act. Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the designation, constitution and manner of appointment of the prescribed authority;
- (b) the preparation of development schemes and the particulars to be submitted with development schemes referred to in sub-section (1) of section 5;
- (c) the manner of taking possession of land referred to in clause (a) of the proviso to section 8;
- (d) the execution of development schemes referred to in section 10;
- (e) the manner of service of orders referred to in section 11.

15. Any appointment or rules made or any notification issued or anything done or any action taken or any proceeding commenced in exercise of any power conferred by or under the West Bengal Land Development and Planning Ordinance, 1948, shall, on the said Ordinance ceasing to operate, be deemed to have been made, issued, done, taken or commenced in exercise of powers conferred by or under this Act as if this Act had commenced on the 27th day of April, 1948. Continuance of action taken under West Bengal Ordinance II of 1948.

West Ben.
Ord. II of
1948.

¹See footnote 1 on page 484, *ante*.

West Bengal Act XXV of 1948¹

THE WEST BENGAL RAW JUTE FUTURES ACT, 1948.

ADAPTED

.. The Adaptation of Laws Order, 1950.

[8th October, 1948.]

An Act to provide for the prevention of dealing in raw jute futures.

WHEREAS it is expedient to provide for the prevention of dealing in raw jute futures;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal Raw Jute Futures Act, 1948.

Short title,
extent and
commence-
ment.

(2) It extends to the whole of West Bengal.

West Ben.
Ord. X of
1948.

(3) It shall come into force on the date on which the West Bengal Raw Jute Futures Ordinance, 1948, ceases to operate.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions

(1) “contract relating to raw jute futures” means a contract relating to the sale or purchase of a screwed bale of raw jute made on a forward basis—

(a) providing for the payment or receipt, as the case may be, of margin in such manner and on such dates as may be specified in the contract, or

(b) by or with any person not being a person who—

(i) habitually deals in the sale or purchase of raw jute involving the actual delivery of possession thereof, or

(ii) possesses, or has control over, a godown and other means and equipments necessary for the storage and supply of raw jute;

(2) “margin” means the difference between the rate specified in a contract relating to the sale or purchase of a screwed bale of raw jute made on a forward basis and the rate prevailing on such date subsequent to the date of the contract as may be specified in the contract.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 7th September, 1948, Part IV, page 761; for proceedings of the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 21st September, 1948.

(Sections 3, 4.)

Power of
State
Govern-
ment to
prohibit
contracts
relating to
raw jute
futures.

3. (1) The ¹[State] Government may, from time to time, if it so thinks fit, by notification in the *Official Gazette*, prohibit the making of contracts relating to raw jute futures and may, by like notification, withdraw such prohibition:

Provided that the withdrawal of any such prohibition shall not affect the operation of the provisions of sub-section (2) in respect of any contract relating to raw jute futures made prior to the date on which the prohibition is withdrawn.

(2) When the making of contracts relating to raw jute futures is prohibited by a notification under sub-section (1),—

- (a) no person shall make any such contract or pay or receive any margin except, in the case of any such contract made prior to the date of the notification, to the extent to which the payment or receipt, as the case may be, of margin is allowable on the basis of the last closing rate in a notified market;
- (b) no owner or occupier of any premises shall knowingly permit such premises to be used for the making of any such contract or for the payment or receipt of margin in contravention of the provisions of clause (a); and
- (c) notwithstanding anything contained in any other law for the time being in force,—
 - (i) every such contract made, and every claim in respect of margin, in contravention of the provisions of clause (a), shall be void and unenforceable, and
 - (ii) every such contract made prior to the date of publication of the notification shall be varied and settled on the basis of the last closing rate in a notified market.

Explanation.—In this sub-section,—

- (a) “last closing rate” means the rate fixed by the Directors of a notified market to be the closing rate of such market immediately preceding the date of publication of the notification under sub-section (1) prohibiting the making of contracts relating to raw jute futures; and
- (b) “notified market” means a raw jute futures market recognised by the ¹[State] Government by notification in the *Official Gazette*.

Penalty.

4. Whoever, in contravention of the provisions of section 3,—

- (a) makes a contract relating to raw jute futures, or pays or receives, as the case be, margin, or

¹The word within square brackets was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

XXV of 1948.]

(Sections 5, 6.)

(b) being the owner or occupier of any premises, knowingly permits such premises to be used for the making of a contract relating to raw jute futures, or for the payment or receipt of margin, shall, on conviction, be punishable with imprisonment which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

**Act V of
1898.**

5. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence punishable under this Act shall be cognisable and non-bailable and shall not be triable by any Magistrate other than a Presidency Magistrate or Magistrate of the First Class. **Special procedure.**

**West Ben.
Ord. X of
1948.**

6. Any notification issued or anything done or any action taken or any proceedings commenced in exercise of any power conferred by or under the West Bengal Raw Jute Futures Ordinance, 1948, shall, on the said Ordinance ceasing to operate, be deemed to have been issued, done, taken or commenced in exercise of powers conferred by or under this Act as if this Act had commenced on the 24th day of August, 1948. **Continu-
ance of
action
taken
under West
Bengal
Ordinance
X of 1948.**

West Bengal Act XXVI of 1948¹

THE WEST BENGAL CEMENT CONTROL ACT, 1948.

AMENDED * .. West Ben. Act XXI of 1956.

ADAPTED .. The Adaptation of Laws Order, 1950.

[8th October, 1948.]

An Act to confer powers to control the production, supply and distribution of, and trade and commerce in, cement in West Bengal.

WHEREAS it is expedient to confer powers to control the production, supply and distribution of, and trade and commerce in, cement in West Bengal;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal Cement Control Act, 1948.

Short title,
extent and
commence-
ment.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on the date on which the West Bengal Cement Control Ordinance, 1948, ceases to operate.

West Ben.
Ord. IX of
1948.

2. In this Act, unless there is anything repugnant in the subject or context, "cement" includes portland cement, any other cementitious product manufactured by intergrinding or intermixing portland cement as defined in the British Standard Specifications of 1940, with any active or inert material, white and coloured cements, high alumina cements, and any product manufactured by direct mixing of some or all oxides constituting normal portland cement.

Definition.

3. (1) The ²[State] Government, so far as it appears to it to be necessary or expedient for maintaining or increasing the supply of cement or for securing its equitable distribution and availability at fair prices, may, by order in the *Official Gazette*, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein within West Bengal.

Power to
control
produc-
tion,
supply,
distribu-
tion, etc.,
of cement.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide—

(a) for regulating by licences, permits or otherwise the production or manufacture of cement;

(b) for regulating or controlling the prices at which cement may be purchased or sold and for prescribing the conditions of sale thereof;

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 31st August, 1948, Part IV, page 742; for proceedings of the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 21st September, 1948.

²The word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Section 4.)

- (c) for regulating by licences, permits or otherwise, the storage, transport, movement, possession, distribution, disposal, acquisition, use or consumption of cement;
- (d) for prohibiting the withholding from sale of cement ordinarily kept for sale;
- (e) for requiring any person holding stock of cement to sell the whole or specified part of the stock at such prices and to such persons or classes of persons or in such circumstances, as may be specified in the order;
- (f) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters;
- (g) for requiring persons engaged in the production, supply or distribution of, or trade or commerce in, cement to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto, as may be specified in the order; and
- (h) for any incidental and supplementary matters, including in particular the entering and search of premises, vehicles, vessels and aircraft, the seizure by a person authorised to make such search of cement in respect of which such person has reason to believe that a contravention of the order has been, is being or is about to be committed, the grant or issue of licenses, permits or other documents, and the charging of fees therefor.

(3) When any cement is seized under the authority of any order made under sub-section (I), the person seizing the cement shall make a report of such seizure to a Magistrate who may give such directions as to its temporary custody as he thinks fit, so, however, that where no prosecution is instituted for contravention of the order in respect of the cement seized within a period in his opinion reasonable, the Magistrate shall direct its return to the person from whom it was seized; and the provisions of the Code of Criminal Procedure, 1898, shall, so far as they may be applicable, apply to any search or seizure under any such order as they apply to any search or seizure under Chapter VII of that Code.

Act V of
1898.Delegation
of powers.

4. The ¹[State] Government may, by order in the *Official Gazette*, direct that the power to make orders under section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction,

¹See footnote 2 on page 495, ante.

X[XVI of 1948.]

(Sections 5—9.)

be exercisable also by such Officer ¹[, not below the rank of Subdivisional Controller of Food and Supplies,] as may be specified in the direction.

5. Any order made under section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

Effect of orders inconsistent with other enactments.

6. If any person contravenes any order made under section 3, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both, and, if the order so provides, any Court, trying such contravention, may direct that any property in respect of which the Court is satisfied that the order has been contravened shall be forfeited to ²[Government].

Penalties.

7. Any person who attempts to contravene, or abets a contravention of, any order made under section 3, shall be deemed to have contravened that order.

Attempts and abetments.

8. If the person contravening an order made under section 3 is a company or other body corporate, every director, manager, secretary or other officer or agent thereof shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

Offences by corporation.

9. If any person—

False statement.

- (i) when required by any order made under section 3 to make any statement or furnish any information, makes any statement or furnishes any information which is false in any material particular and which he knows or has reasonable cause to believe to be false, or does not believe to be true, or
- (ii) makes any such statement as aforesaid in any book, account, record, declaration, return or other document which he is required by any such order to maintain or furnish,

he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

¹The words within square brackets were substituted for the words "or authority subordinate to the State Government" by section 2 of the West Bengal Cement Control (Amendment) Act, 1956 (West Ben. Act XXI of 1956).

²The word within square brackets was substituted for the words "His Majesty" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

[West Ben. Act XXVI of 1948.]

(Sections 10—16.)

Cogni-
zance of
offences.

10. No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Indian Penal Code.

Act XLV
of 1860

11. [Power to try offences summarily—Omitted by sec. 3 of the West Bengal Cement Control (Amendment) Act, 1956 (West Ben. Act XXI of 1956).]

Special
provision
regarding
fines.

12. Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any Magistrate of the First Class specially empowered by the ¹[State] Government in this behalf and for any Presidency Magistrate to pass a sentence of fine exceeding one thousand rupees on any person convicted of contravening an order made under section 3.

Act V of
1898.

Savings.

13. ²[Save as provided in the Constitution of India No order] made in exercise of any power conferred by or under this Act shall be called in question in any Court.

Protection
of action
taken
under the
Act.

14. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

(2) No suit or other legal proceeding shall lie against the ³[Government] for any damages caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

Power to
exempt
certain
varieties
of cement.

15. The ¹[State] Government may, by notification in the *Official Gazette*, exempt any variety of cement from all or any of the provisions of this Act.

Continu-
ance of
action
taken
under West
Ben. Ord.
IX of 1948.

16. Any order or direction issued or any action taken or anything done or any penalty, forfeiture or punishment incurred or imposed or any proceeding commenced in exercise of any power conferred by the West Bengal Cement Control Ordinance, 1948, shall, on the said Ordinance ceasing to be in operation, be deemed to have been issued, taken, done, incurred, imposed or commenced under the provisions of this Act as if this Act had commenced on the 6th day of August, 1948.

West Ben.
Ord. IX of
1948.

¹See footnote 2 on p. 3707, *ante*.

²The words within square brackets were substituted for the words "No order" by sec. 4 of the West Bengal Cement Control (Amendment) Act 1956 (West Ben. Act XXI of 1956.)

³The word within square brackets was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

West Bengal Act XXIX of 1948¹

THE WEST BENGAL UNDESIRABLE ADVERTISEMENTS (CONTROL) ACT, 1948.

ADAPTED . . . The Adaptation of Laws Order, 1950.

[15th October, 1948.]

An Act to control the publication of advertisements relating to contraceptives and the medical treatment of certain diseases and disorders.

WHEREAS it is expedient to control the publication of advertisements relating to contraceptives and the medical treatment of certain diseases and disorders;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal Undesirable Advertisements (Control) Act, 1948. Short title, extent and commencement.

(2) It extends to the whole of West Bengal.

²(3) It shall come into force on such date as the ³[State] Government may, by notification in the *Official Gazette*, appoint.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(1) “advertisement” includes oral advertisement and also includes any notice, sign, announcement, bill, hand-bill, circular, book, newspaper, magazine, periodical, pamphlet or leaflet, whether pictorial or otherwise;

(2) “prescribed” means prescribed by rules made under this Act;

(3) “sexual disorder” means any ailment, irregularity, affection or diseased condition of the organs of generation;

(4) “venereal disease” means syphilis, gonorrhœa or soft chancre or any sign, symptom or *sequela* of such disease and includes such other venereal diseases as may be prescribed by the ³[State] Government in this behalf.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extra-ordinary*, dated the 18th March, 1948, Part IV, page 297; for proceedings of the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 8th September, 1948.

²The Act came into force on the 15th day of August, 1951, *vide* notification No. Medl. 4562/V-5/51, dated the 4th August, 1951, published in the *Calcutta Gazette*, of the 9th August, 1951, Part I, page 1989.

³The word within square brackets was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Sections 3, 4.)

Prohibition
of issue of
certain ad-
vertise-
ments.

3. (1) No person shall by means of any advertisement,—

- (a) prescribe or offer to prescribe any medicine or appliance for use as contraceptive, or
- (b) offer to treat any person for, or indicate the line of treatment of, any venereal disease, sexual disorder, irregularity of menstruation or any other prescribed disease, infirmity or abnormality or offer to prescribe, any remedy therefor, or give or offer to give any advice in connection with the treatment thereof.

(2) No person shall print or publish, or cause to be printed or published, for distribution or exhibition to the public, or circulate or cause to be circulated or exhibit or cause to be exhibited, to the public or to any person,—

- (a) any advertisement referred to in sub-section (1), or
- (b) any label or set of instructions, whether pictorial or otherwise, to be affixed to or delivered with, any packet, box, bottle or phial,

if such label or set of instructions recommends, asserts or infers that any remedy, medicine, medicinal or herbal preparation or any appliance or charm of any kind, whether for use internally or externally, is a contraceptive or is useful or may be used as a contraceptive, or is a cure, or is useful or may be used, for the prevention, treatment or relief of any venereal disease, sexual disorder, irregularity of menstruation or any other prescribed disease, infirmity or abnormality.

Confisca-
tion of
documents,
etc., con-
taining ad-
vertise-
ment, etc.,
which con-
travenes
section 3.

4. (1) Any person prescribed under sub-section (2) who may be authorised in writing in this behalf by the Commissioner of Police in Calcutta and the District Magistrate elsewhere may at any time seize and detain any document or any article or thing which such person has reason to believe contains any advertisement which contravenes any of the provisions of section 3, and the Court trying such contravention may direct that such document or such article or thing and all copies thereof shall be forfeited to¹[Government].

(2) The ²[State] Government shall prescribe the persons or classes of persons who may be authorised under sub-section (1) to take the action provided for under that sub-section.

(3) Where in pursuance of sub-section (1) any document or article or thing has been declared to be forfeited to¹[Government], any police officer may seize any copy thereof, wherever found, and any Magistrate may by warrant

¹The word within square brackets was substituted for the words "His Majesty" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²See footnote 3 on p. 499, ante.

XXIX of 1948.]

(Sections 5—8.)

authorise any police officer not below the rank of Sub-Inspector to enter upon and search any premises whereon or wherein such document or article or thing or any copy thereof is or is reasonably suspected to be.

**Ben. Act
IV of 1866.**

**Ben. Act
II of 1866.**

Explanation.—In this section “Calcutta” means the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866, together with the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866.

5. Whoever contravenes any of the provisions of section 3 shall, on conviction, be punishable with imprisonment which may extend to one year, or with fine which may extend to one thousand rupees, or with both. **Penalty.**

6. Nothing in this Act shall apply to,—

**Act not to
apply in
certain
cases.**

- (a) any medical treatise or book, or any treatise or book dealing with the subject from a *bona fide* scientific or social standpoint, or
- (b) any advertisement, or any article or thing sent confidentially in the prescribed manner only to a medical practitioner or to a wholesale or retail chemist for the purpose of his business, or
- (c) any advertisement made, printed or published with the previous sanction of such person or persons as the ¹[State] Government may appoint in this behalf, or
- (d) any advertisement, label or set of instructions which is permitted under the Drugs Act, 1940, or any rules made thereunder.

**XXIII of
1940.**

Explanation.—“Medical practitioner” in this section includes a person regularly practising either the allopathic, homœopathic, Ayurvedic, Unani or any other system of medicine.

7. No Magistrate other than a Presidency Magistrate or a Magistrate of the First Class shall try an offence punishable under this Act.

**Jurisdiction
to try
offences.**

**Act XLV
of 1890.**

8. Any person empowered to act under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

**Officers to
be deemed
public
servants.**

¹See footnote 3 on p. 499, *ante*.

[West Ben. Act XXIX of 1948.]

(Sections 9, 10.)

Indemnity. 9. No suit, prosecution or other legal proceeding shall lie against any servant of the ¹[Government] for anything which is in good faith done or intended to be done under this Act.

Power to make rules. 10. (1) The ²[State] Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the venereal diseases referred to in clause (4) of section 2;
- (b) the diseases, infirmities or abnormalities referred to in section 3;
- (c) the persons and classes of persons referred to in sub-section (2) of section 4;
- (d) the manner of sending confidentially an advertisement, article or thing referred to in clause (b) of section 6.

¹The word within square brackets was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²See footnote 3 on p. 499, *ante*.

West Bengal Act XXX of 1948¹

THE CALCUTTA SHERIFF'S ACT, 1948.

AMENDED

West Ben. Act XXIII of 1950.

ADAPTED

The Adaptation of Laws Order, 1950.

[15th October, 1948.]

*An Act to provide for certain matters relating to the
the Sheriff of Calcutta*

Page 503—

After section 4, insert the following section, namely:—

“4A. In the event of the occurrence of any vacancy in the office of the Sheriff by reason of his death, resignation or removal, or otherwise, the Deputy Sheriff shall perform the functions of the Sheriff until a new Sheriff, appointed in accordance with the provisions of this Act, enters upon his office and shall, during such period, have the same privileges and be subject to the same liabilities as the Sheriff and be entitled to such remuneration as the Governor may determine.”.

(Inserted by West Ben. Act VIII of 1959, section 3.)

[No. 4, dated the 1st June, 1959.]

*This correction shall be deemed to have come into force with retrospective effect.

treasure or the
tion] as
ration].

Page 503—

In section 4, after the words “the Deputy Sheriff of Calcutta” insert the words “(hereinafter referred to as the Deputy Sheriff)”.

(Inserted by West Ben. Act VIII of 1959, section 2.)

[No. 4, dated the 1st June, 1959.]

ted in Appoint-
tion] as ment of the
Deputy
Sheriff of
Calcutta.

f and Power of
t the the High
inner Court to
control cer-
tain func-
tions of the
Sheriff
and other
employees.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 20th August, 1948, Part IV, page 687; for proceedings of the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 8th September, 1948.

²The Act was brought into force on the 20th December, 1948, vide notification No. 5968, dated the 14th December, 1948, published at page 1652 of Part I of the *Calcutta Gazette* of the 16th December, 1948.

³The word within square brackets was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴The word within square brackets was substituted with retrospective effect by ss. 2 and 3 of the Calcutta Sheriff's (Amendment) Act, 1950 (West Ben. Act XXIII of 1950) for the word “allowances”.

(Sections 6—9.)

Posts of officers and servants of the Sheriff to be civil posts under the Government.

6. Notwithstanding anything contained in the Charter establishing the Supreme Court of Judicature at Fort William in Bengal, dated the twenty-sixth day of March, 1774, or in any other law, the posts of all such officers and servants (other than employees who are paid by the day) as may be employed for the proper performance of the duties of the Sheriff shall, on the commencement of this Act, be civil posts under ¹[the Government].

Indemnity.

7. The Sheriff and the Deputy Sheriff and their subordinates shall be exempt from liability in respect of all their acts or defaults done or committed while exercising or purporting to exercise their functions under this Act or for which they would have been liable but for this Act.

Liability of the State revenues in certain

8. ²(1) The Consolidated Fund of the State shall be liable to make good all sums required to discharge any liability from which the Sheriff, the Deputy Sheriff or their subordinates are exempted under the provisions of section 7.

Pages 504-505—

In sections 8 and 10, for the words "revenues of the State", wherever they occur, substitute the words "Consolidated Fund of the State".

(Substituted by West Ben. Act VIII of 1959, section 4.)

[No. 4, dated the 1st June, 1959.]

SUB-SECTION 10. The Sheriff and the Deputy Sheriff and their subordinates shall be liable personally to pay such sum.

(4) Sums payable by the "[State] Government under sub-section 10 shall be charged on the revenues of the State".

Page 504—

* For section 9, substitute the following section, namely:—

Disposal of fees, poundages and charges by the Sheriff.

"9. The Sheriff shall dispose of, in such manner and at such times as may be prescribed, the balance standing on the date of the commencement of this Act to the credit of the account known as the 'Sheriff's Account Number II' and all fees, poundages, charges and other monies realised by him or by any of his officers and servants, after the said date."

Page 504—

After section 9, insert the following section, namely:—

"9A. The Sheriff shall not incur any expenditure on account of the wages of temporary guards, advertisement charges, subsistence allowance or on any other account unless the parties have deposited the necessary amounts in advance."

(Inserted by West Ben. Act VIII of 1959, section 6.)

[No. 4, dated the 1st June, 1959.]

XXX of 1948.]

(Sections 10, 11.)

10. The Trustees of the fund known as "the Sheriff's Pension Fund" (hereinafter referred to as the Fund), maintained for the provision of pensions for the officers and servants employed by the Sheriff * * *, shall transfer and pay to such authority, in such manner and at such times as may be prescribed, the balance standing to the credit of the Fund * * *, and such balance shall be carried to the account and credit of the revenues of the ³[State].

The
Sheriff's
Pension
Fund.

11. (1) All officers and servants previously employed by the Sheriff who, at the date of the commencement of this Act, are in receipt of pensions or entitled to gratuities in accordance with the rules of the Fund, shall be paid such pensions.

Pages 505-506—

In section 11, —

(1) in sub-sections (1), (2) and (4), for the words "revenues of the State", substitute the words "Consolidated Fund of the State";

(2) in sub-section (5) —

*(a) for the words "his employment under the Sheriff", substitute the following words, namely:—

"the period of his employment under the Sheriff including the period up to the date of such permanent re-employment",

*This correction shall be deemed to have come into force with retrospective effect.

*(b) after the words "rules relating to", insert the word "leave,"

*(c) for the proviso, substitute the following proviso, namely:—

"Provided that if any such officer or servant has been paid any pension or gratuity under sub-section (2) then, unless he surrenders his right to such pension and refunds the amount received by him as pension or gratuity the period of employment under the Sheriff prior to the date of the commencement of this Act shall not count as service for purposes of pension under this sub-section.", and

*(d) for the Explanation, substitute the following Explanation, namely:—

"Explanation.—The rules relating to leave, pay and pensions shall mean the rules relating to the leave, pay and pensions of servants of the State Government."

ount of
ler sub-
ie West
f which
of any

it of the
respects
Govern-
half by

anently
ent, his
s of the

tted by s.
XXIII of

e omitted

(Substituted and inserted by West Ben. Act VIII of 1959, section 7.)

[No. 4, dated the 1st June, 1959.]

(Section 12.)

rules relating to pay and pensions, be deemed to have been service under the ¹[State] Government:

Provided that,—

- (a) if any such officer or servant desires to elect to refund any gratuity or cease to draw any pension, as the case may be, and to count for future pension his employment under the Sheriff, he shall so elect immediately on being permanently re-employed; and
- (b) if he so elects, any period of temporary service under the ¹[State] Government intervening between the date of the commencement of this Act and the date of such permanent re-employment shall not be considered as a break in service, but shall not count as service for the purposes of pension.

Explanation.—Where such election is made, the whole of the pension, both for employment under the Sheriff prior to the commencement of this Act and for service in such permanent re-employment under the ¹[State] Government, shall be calculated at the rates provided in the rules relating to the pensions of servants of the ¹[State] Government, and not at the rates provided in the rules of the Fund.

Power to
make rules.

12. (1) The ¹[State] Government may make rules for carrying into effect the purposes of this Act in regard to those functions of the Sheriff which are discharged under the administrative control of the ¹[State] Government.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for,—

- (a) the manner of appointment and the ²[remuneration] of the Deputy Sheriff referred to in section 4;
- (b) the distribution of work between the Sheriff and the Deputy Sheriff;
- (c) the authority referred to in sections 9 and 10 and the manner in which and the time at which the fees ³[, poundage and charges,] and balances referred to in these sections shall be transferred and paid;
- (d) the safe custody and deposit of all monies, securities and other moveables which come into the hands of the Sheriff; and
- (e) the accounts to be maintained by the Sheriff, and the audit and inspection thereof.

¹See footnote 3 on p. 503, *ante*.

²The word within square brackets was substituted for the word "allowances" by s. 7 (1) of the Calcutta Sheriff's (Amendment) Act, 1950 (West Ben. Act XXIII of 1950).

³The words within square brackets were inserted by s. 7(2), *ibid*.

West Bengal Act XXXI of 1948¹

THE WEST BENGAL LAND-REVENUE, RENT AND CESS (APPORTIONMENT) ACT, 1948.

ADAPTED

The Adaptation of Laws Order, 1950.

[15th October, 1948.]

An Act to apportion and fix the land-revenues, rents, and cesses in respect of the portions situated within West Bengal of certain estates, Putni and other tenures and holdings.

WHEREAS certain estates, tenures and holdings in the Province of Bengal as it existed before the date on which the award came into force are comprised of lands situated, after the said date, partly in the Province of West Bengal in the Dominion of India and partly in the Province of East Bengal in the Dominion of Pakistan;

AND WHEREAS it is expedient to apportion and fix the land-revenues or rents, as the case may be, and the cesses payable in respect of the portions situated in West Bengal of the common estates, tenures or holdings;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal Land-revenue, Rent and Cess (Apportionment) Act, 1948.

Short
title,
extent and
commence-
ment.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on such ²date as the ³[State] Government may, by notification in the *Official Gazette*, appoint.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(1) “award” means the award of the Boundary Commission referred to in section 3 of the Indian Independence Act, 1947;

(2) the expression “common estates, tenures or holdings” means estates, tenures or holdings which are comprised of lands situated, after the date on which the award came into force, partly in the

10 and 11
Geo. I, c.
30.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 11th September, 1948, Part IV, page 767; for proceedings of the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 23rd September, 1948.

²The Act was brought into force on the 23rd December, 1948, *vide* notification No. 9958L Ref., dated the 18th December, 1948, published at page 1692 of the *Calcutta Gazette* of the 23rd December, 1948.

³The word within square brackets was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Sections 3—6.)

¹[State] of West Bengal in ²* * India and partly in ³[the Province of East Bengal] in ⁴** Pakistan;

(3) “prescribed” means prescribed by rules made by the ⁴[State] Government under this Act;

(4) “Revenue-officer” includes any officer whom the ⁴[State] Government may appoint to discharge any of the functions of a Revenue-officer under this Act; and

(5) “tenure” includes a *Putni* tenure.

Power to order preparation of record of lands in common estates, tenures and holdings.

3. The ⁴[State] Government may, by notification in the *Official Gazette*, make an order directing that a record be prepared in such manner and containing such particulars as may be prescribed of all lands in West Bengal forming parts of the common estates, tenures or holdings.

Preparation of record.

4. When an order has been made for the preparation of a record under section 3, the Revenue-officer shall prepare such record accordingly containing, in addition to the particulars referred to in section 3, the amounts of land-revenues or rents, as the case may be, and of cesses payable in respect of the portions included in West Bengal of the common estates, tenures or holdings, to be determined by the Revenue-officer in such manner and in accordance with such principles as may be prescribed.

Preliminary publication of records.

5. When a record has been prepared under section 4, the Revenue-officer shall cause a draft of it to be published in such manner and for such period as may be prescribed and shall receive, during the period of publication of the record, any objections made in regard to any entry therein or omission therefrom relating to the apportionment of land-revenues, rents or cesses.

Final disposal of objections, and confirmation and final publication of record.

6. (1) After the expiry of the period of publication of the record under section 5, the Revenue-officer shall submit the record to the Revenue authority prescribed with a summary of the objections, if any, which he has received and his report thereon.

¹The word within square brackets was substituted for the word “Province”, by the Adaptation of Laws Order, 1950.

²The words “the Dominion of” were omitted by paragraph 3 of, and the Eleventh Schedule to, *ibid.*

³The expression within square brackets shall stand unmodified, *ibid.*

⁴See footnote 3 on p. 507, *ante.*

XXVI of 1948.]

(Sections 7—9.)

(2) Such authority shall finally dispose of the objections submitted to it under sub-section (1) according to such rules as the ¹[State] Government may make and may confirm the record with or without amendment:

Provided that no entry shall be amended or omission supplied unless notice has been given to the parties concerned for such period and in such manner as may be prescribed to appear and be heard in the matter.

(3) After confirmation by such authority the Revenue-officer shall cause the record to be finally published in the manner prescribed and such publication shall be conclusive evidence that the record has been duly prepared under this Act.

7. (1) Any person who is aggrieved by any entry in, or omission from, the record finally published under section 6 in so far as such record relates to the apportionment and fixation of rents or cesses in respect of tenures or holdings, may appeal to the superior Revenue authority prescribed in such manner and within such period as may be prescribed. Appeal and savings.

(2) Notwithstanding anything contained in any other law for the time being in force, no Court shall have any jurisdiction in respect of any issue arising out of the proceedings under this Act for the apportionment and fixation of land-revenues, rents or cesses or shall annul or alter any decision of a Revenue-officer or a Revenue authority under this Act.

8. The Revenue-officer may, at any time, either of his own motion or on application, and after giving notice to the parties concerned for such period and in such manner as may be prescribed to appear and be heard in the matter, correct any clerical or arithmetical mistake in the record finally published under section 6 or any error arising therein from any accidental slip or omission and shall make such alterations therein as may be necessary to give effect to any decision on appeal under sub-section (1) of section 7. Correction of record.

9. On the final publication of the record under section 6,—

(a) the apportionment and fixation, thereunder, of land-revenues or rents, as the case may be, and of cesses in respect of the portions situated in West Bengal of the common estates, tenures or holdings shall, notwithstanding anything contained in any other law for the time being in force or in any contract, be deemed to have come into force and the common estates, tenures or holdings, as the case may be, shall be deemed to have been and to

Commencement and effect of the records.

¹See Footnote 3 on p. 507, *ante*.

[West Ben. Act XXXI of 1948.]

(Section 10.)

be partitioned accordingly, on and from the date on which the award came into force (hereinafter referred to as the said date), and

- (b) all laws for the time being in force relating to the creation or settlement of estates, tenures or holdings or to the recovery of land-revenue, rent or cesses in respect thereof shall be deemed to have been and to be applicable *mutatis mutandis* to such partitioned estates, tenures or holdings on and from the said date.

Power to
make rules.

10. (1) ¹[State] Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the manner of preparing a record and the particulars to be contained therein referred to in section 3;
- (b) the manner of, and the principles for, determining the amounts of land-revenues, rents and cesses referred to in section 4;
- (c) the manner and period of publication of a draft record referred to in section 5;
- (d) the Revenue authority referred to in sub-section (1) of section 6, and the disposal of objections under sub-section (2) and the manner of final publication of a record under sub-section (3) of that section;
- (e) the period of, and the manner of giving, notice referred to in the proviso to sub-section (2) of section 6 and in section 8; and
- (f) the superior Revenue authority referred to in sub-section (1) of section 7, the manner of presentation of appeals to such authority and the period within which such appeals shall be presented under the said sub-section.

¹See footnote 3 on p. 507, *ante*.

West Bengal Act XXXIII of 1948¹

THE WEST BENGAL MATERNITY BENEFIT (TEA ESTATES) ACT, 1948.

AMENDED .. West Ben. Act XII of 1950.

ADAPTED .. The Adaptation of Laws Order, 1950.

[28th October, 1948.]

An Act to regulate the employment of women in tea factories and plantations for certain periods before and after child-birth and to provide for the payment of maternity benefit to them.

WHEREAS it is expedient to regulate the employment of women in tea factories and plantations for certain periods before and after child-birth and to provide for the payment of maternity benefit to them;

It is hereby enacted as follows:—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the West Bengal Maternity Benefit (Tea Estates) Act, 1948.

(2) It extends to the whole of West Bengal.

(3) It shall come into force² on such date as the '[State] Government may, by notification in the *Official Gazette*, direct.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "child" includes a still-born child;

(b) "employer" includes the occupier and the manager of a plantation or a factory;

(c) "expected day of her delivery" means the expected day of delivery of a woman as determined by the medical practitioner referred to in sub-section (1) of section 6;

(d) "factory" means—

(i) a factory as defined in clause (j) of section 2 of the Factories Act, 1934, 'or

XXV of
1934.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 16th March, 1948, Part IV, page 289; for proceedings of the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 8th September, 1948.

²The Act was brought into force with effect from the 1st May, 1949, vide notification No. 2075Lab., dated the 29th April, 1949, published in the *Calcutta Gazette, Extraordinary* of 1949, Part I, page 390.

³The word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order 1950.

⁴The Factories Act 1934 (XXV of 1934) was repealed and re-enacted by the Factories Act, 1948 (LXIII of 1948).

512 *The West Bengal Maternity Benefit (Tea Estates) Act, 1948.*

[West Ben. Act

(Sections 3, 4.)

- (ii) a place declared to be a factory under sub-section (1) of section 5 of that Act,

in which any process is carried on for the manufacture of tea or in which any process is carried on incidental to or connected with such manufacture;

- (e) "maternity benefit" means the sum of money payable under the provisions of this Act to a woman employed in a plantation or a factory;

- (f) "nurse" includes a midwife or a trained *dhai*,

- (g) "plantation" means any estate which is maintained for the purpose of growing tea [the plant *Camellia Thea* (Linn)] and in which twenty or more women are employed, or were employed on any day of the preceding twelve months, for that purpose;

- (h) "prescribed" means prescribed by rules made under this Act;

- (i) "woman" means a woman worker; and

- (j) expressions used, but not defined in this Act, have where they have been defined in the Factories Act, 1934,¹ the same meaning as in that Act.

XXV of
1934.

Employment of, or work by, women in factories prohibited during certain period.

3. After this Act comes into force—

- (1) no employer shall knowingly employ a woman in any factory or plantation during the six weeks immediately following the day of her delivery; and
- (2) no woman shall work in any factory or plantation during the six weeks immediately following the day of her delivery.

Right to, and liability for, payment of maternity benefit.

4. Subject to the provisions of this Act, every woman employed in a factory or a plantation shall be entitled to, and her employer shall be liable for, the payment of maternity benefit in respect of the period of six weeks preceding the expected day of her delivery and six weeks immediately following the day of her delivery:

Provided that a woman shall not be entitled to such maternity benefit unless she has worked in any factory or plantation of the employer from whom she claims

¹See footnote 4 on page 511.

*The West Bengal Maternity Benefit (Tea Estates) 513
Act, 1948.*

XXXIII of 1948.]

(Sections 5, 6.)

fifty
the

Page 513—

In section 5, for the words "five rupees and four annas" substituted the words "seven rupees".

(Substituted by West Ben. Act IX of 1959, section 2

[No. 4, dated the 1st June, 1959.]

d as

- (b) during the period which extends from the commencement of the six weeks immediately preceding the expected day of her delivery to the day of her delivery and during the six weeks immediately following the day of her delivery attended or permitted herself to be treated in any clinic or hospital, or permitted herself to be treated by any medical practitioner or nurse as required in sub-section (2) of section 6:

Provided further that non-compliance by the woman with the provisions of sub-section (2) of section 6 before the day of her delivery shall not disentitle her to maternity benefit if the medical practitioner referred to in sub-section (3) of section 6 certifies that in his opinion such non-compliance was due to premature delivery or to a *bona fide* miscalculation on the part of the woman as to the state of advancement of her pregnancy.

5. The maternity benefit which is compulsorily payable under section 4 shall be payable at the rate of five rupees and four annas a week for every week during the period of twelve weeks referred to in that section and such payment shall be made either wholly in cash or partly in cash and partly in kind.

Amount of
maternity
benefit.

6. (1) Every woman who claims or intends to claim maternity benefit from her employer under this Act shall permit herself to be medically examined by, or under the direction of, the medical practitioner referred to in sub-section (3) for the purpose of enabling him to determine the expected day of her delivery and such medical practitioner shall after such examination furnish her with a certificate as to the expected day of her delivery.

Ante-natal
and post-
natal care
of women.

(2) Every woman who claims or intends to claim maternity benefit from her employer under this Act shall, during the period which extends from the commencement

(Sections 7, 8.)

of the six weeks immediately preceding the expected day of her delivery to the day of her delivery and during the six weeks immediately following the day of her delivery,—

(a) where free ante-natal and post-natal treatment is provided for her in any hospital or clinic approved in this behalf by the prescribed medical authority, attend such hospital or clinic as required by the medical officer-in-charge thereof and permit herself to be treated therein, or

(b) where there is no such hospital or clinic, permit herself to be treated by such medical practitioner or nurse as is provided by her employer under sub-section (3).

(3) Every employer shall arrange that the services of a medical practitioner and a nurse approved in this behalf by the prescribed medical authority are always available in his factory or plantation for the purpose of giving free ante-natal and post-natal treatment or advice to the women of his factory or plantation.

Amount of work which can be undertaken by a woman during ante-natal period.

7. Notwithstanding that a woman has given notice under sub-section (1) of section 8 that she expects to be confined within one month and a half next following, she may, during the period which extends from the commencement of the six weeks immediately preceding the expected day of her delivery to the day of her delivery, undertake light work in the factory or plantation of the employer from whom she claims maternity benefit if and for so long as the medical practitioner referred to in sub-section (3) of section 6 certifies that she is physically fit so to do, and for the days that she does such work she shall be paid at the prevailing rate of pay for such work, and such pay shall be paid to her in addition to the maternity benefit which she may be entitled to receive under this Act.

Procedure regarding payment of maternity benefit.

8. (1) Any woman who claims or intends to claim maternity benefit under the provisions of this Act shall, on any day, give notice either orally in person or in writing to the employer of the factory or the plantation that she expects to be confined within one month and a half next following and submit at the same time to such employer the certificate referred to in sub-section (1) of section 6 and may nominate in the prescribed form a person for purposes of section 9.

(2) When the notice and the certificate referred to in sub-section (1) are received the employer shall permit the woman who has given the notice to absent herself from work in the factory or plantation on and from the day following that on which such notice and certificate are received until the expiration of six weeks after the day of her delivery.

*The West Bengal Maternity Benefit (Tea Estates) 515
Act, 1948.*

XXXIII of 1948.]

(Section 9.)

(3) An employer shall pay the maternity benefit as provided in section 5 to a woman entitled thereto under this Act in twelve equal weekly instalments and the payment of the first instalment thereof shall be made within seven days of the giving of the notice together with the certificate referred to in sub-section (1) by such woman.

(4) If an employer is satisfied on the report of a medical practitioner or medical officer-in-charge of the clinic or hospital referred to in sub-section (2) of section 6 that a woman has ceased according to the provisions of section 4 to be entitled to maternity benefit such employer may discontinue the payment of maternity benefit payable to such woman under sub-section (3).

(5) Any woman who considers herself aggrieved at any cessation of payment of maternity benefit under sub-section (4) may, within thirty days of the date of payment of the last instalment of maternity benefit paid to her under sub-section (3), apply in the prescribed manner to the Inspector of Factories, West Bengal, who after giving both parties an opportunity of being heard may reject the application, or direct the employer to pay to the woman the remaining portion of the maternity benefit, as he deems fit. An appeal from the decision of the Inspector of Factories, West Bengal, shall, within thirty days thereof, lie in the prescribed manner to the Labour Commissioner, West Bengal, whose decision shall be final.

9. (9) If a woman entitled to maternity benefit under this Act dies on the day of her delivery or during the period thereafter in respect of which she is entitled to the maternity benefit, the liability of the employer under section 4 shall not, by reason of her death, be discharged, and he shall pay the amount of maternity benefit due, if the newly born child survives her, to the person who undertakes the care of the child; and, if the child does not survive her, to the person nominated by her under sub-section (1) of section 8 or, if she has made no such nomination, to her next of kin as determined by the employer whose decision shall be final.

Payment
of matern-
ity
benefit in
case of the
death of a
woman.

(2) If a woman dies during the period in respect of which she is entitled to maternity benefit but before giving birth to a child, the employer shall be liable only for the payment of half the amount of maternity benefit due under section 5. Any amount due at the death of the woman shall be paid to the person nominated by her under sub-section (1) of section 8, or, if she has made no such nomination, to her next of kin as may be determined by the employer whose decision shall be final.

**516 *The West Bengal Maternity Benefit (Tea Estates)
Act, 1948.***

[West Ben. Act

(Sections 10—13.)

**No notice
of dis-
missal to
be given to
a woman
in certain
cases.**

10. (1) When a woman absents herself from work in accordance with the provisions of this Act, it shall not be lawful for her employer to give her notice of dismissal during such absence or on such a day that the notice will expire during such absence.

(2) (a) No notice of dismissal given without sufficient cause by an employer to a woman within a period of six months before her delivery shall have the effect of depriving her of any maternity benefit to which but for such notice she may have become entitled under this Act.

(b) If any question arises as to whether any notice of dismissal is one to which clause (a) applies, such question shall be referred for decision to the Inspector of Factories, West Bengal, in the prescribed manner. An appeal from the decision of the Inspector shall, within sixty days thereof, lie in the prescribed manner to the Labour Commissioner, West Bengal, whose decision shall be final.

**Penalty to
woman for
doing work
in contra-
vention of
the Act.**

11. If a woman—

(a) after she has been permitted by her employer under sub-section (2) of section 8 to absent herself from work in a factory or plantation, does any work other than that provided for under section 7, before the day of her delivery, or

(b) works in a factory or plantation or elsewhere during the ¹[six weeks] immediately following the day of her delivery,

she shall be liable, on conviction, to a fine not exceeding ten rupees.

**Penalty for
contra-
vention of
the Act by
an em-
ployer and
applica-
tion of fine
in payment
of com-
pensation.**

12. (1) If any employer contravenes any provision of this Act, he shall, on conviction, be liable to a fine which may extend to five hundred rupees.

(2) Whenever a Court imposes a fine under this section or confirms in appeal, revision or otherwise such a sentence, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied in the payment of compensation to the woman concerned for any loss or damage caused to her by the contravention of a provision of this Act on account of which the fine has been imposed.

**Cogni-
zance of
offences.**

13. (1) No prosecution under this Act shall be instituted except by, or with the previous sanction of, the Inspector of Factories, West Bengal, and no such prosecution shall be instituted until the expiry of the period of

¹The words within square brackets were substituted for the words "four weeks" by s. 2 of the West Bengal Maternity Benefit (Tea Estates) Amendment Act 1950 (West Ben. Act XII of 1950).

**The West Bengal Maternity Benefit (Tea Estates) Bill
Act, 1948.**

LXIII of 1948.]

(Sections 14—16.)

appeal under sub-section (2) or, if such an appeal is preferred, unless the Labour Commissioner, West Bengal, by his order thereon sanctions a prosecution.

(2) Where the Inspector of Factories, West Bengal, decides either to institute a prosecution under this Act or to grant sanction thereto, he shall forthwith communicate his order to the person complained against, who may, within thirty days of the date of the said order, appeal in the prescribed manner to the Labour Commissioner, West Bengal, against such decision. The decision of the Labour Commissioner, West Bengal, on such appeal shall be final.

(3) No Court inferior to that of a Presidency Magistrate or of a Magistrate of the First Class shall try any offence against this Act or any rules made thereunder.

Appeal
against
refusal to
prosecute
or grant
sanction
thereto.

14. Where on an application by an employer or a woman in such behalf, the Inspector of Factories, West Bengal, refuses either to institute a prosecution under this Act or to grant previous sanction thereto, he shall without delay communicate to the applicant his order of refusal and an employer or a woman aggrieved by such order may, within thirty days of the date thereof, appeal in the prescribed manner to the Labour Commissioner, West Bengal, against such order. The decision of the Labour Commissioner, West Bengal, on such appeal shall be final.

Limitation
of prose-
cution.

15. No Court shall take cognizance of any offence against this Act or any rule made thereunder unless complaint thereof has been made to the Inspector of Factories, West Bengal, within six months of the date on which the offence is alleged to have been committed.

Rules.

16. (1) The ¹[State] Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the forgoing power, such rules may provide for—

(a) the preparation and maintenance of a muster roll or register or a combined muster roll and register, and the particulars to be entered in such muster roll, register or combined muster roll and register or in the register kept or deemed to have been kept under section 41 of the Factories Act, **XXV of 1934²**;

¹See foot-note 3 on p. 511, *ante*.

²The Factories Act 1934 (XXV of 1934) was repealed and re-enacted by the Factories Act, 1948 (LXIII of 1948).

[West Ben. Act XXXIII of 1948.]

(Section 17.)

- (b) the inspection of factories for the purposes of this Act by the Inspector of Factories, West Bengal;
 - (c) the exercise of powers and the performance of duties by Inspector of Factories, West Bengal, or the medical authority referred to in section 6 for the purposes of this Act;
 - (d) the method of payment of maternity benefit in so far as provision has not been made in this Act;
 - (e) the medical authority referred to in section 6;
 - (f) the form of nomination referred to in sub-section (1) of section 8; and
 - (g) the procedure to be observed—
 - (i) in submitting applications to the Inspector of Factories, West Bengal, and the disposal of appeals under sub-section (5) of section 8,
 - (ii) in referring questions for decision to the Inspector of Factories, West Bengal, and the disposal of appeals under clause (b) of sub-section (2) of section 10, and
 - (iii) in the disposal of appeals under sub-section (2) of section 13 or section 14.
- (3) Any such rule may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees.
- (4) The power to make rules under this Act shall be subject to the condition of previous publication.

Abstract
of this Act
and the
rules there-
under to be
exhibited.

17. An abstract of the provisions of this Act and the rules thereunder in the local vernaculars shall be exhibited in a conspicuous manner by the employer in every part of a tea factory or a plantation in which women are employed.

West Bengal Act I of 1949¹

THE WEST BENGAL NATIONAL VOLUNTEER FORCE ACT, 1949.

AMENDED .. West Ben. Act LIV of 1950.

ADAPTED .. The Adaptation of Laws Order, 1950.

[24th February, 1949.]

An Act to provide for the constitution of a National Volunteer Force in West Bengal.

WHEREAS it is expedient and necessary to provide for the constitution of a National Volunteer Force in West Bengal by enrolment therein of the citizens of * * * India * * * or persons having permanent domicile in West Bengal who may offer themselves for such enrolment, for service during a period of emergency and for such other purposes as the [State Government] may think fit;

It is hereby enacted as follows:—

1. (1) This Act may be called the West Bengal National Volunteer Force Act, 1949.

Short title,
extent and
commence-
ment.

(2) It extends to the whole of West Bengal.

West Ben.
Ord. XII
of 1948.

(3) It shall come into force on the date on which the West Bengal National Volunteer Force Ordinance, 1948, ceases to operate.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(a) "Advisory Committee" means [the West Bengal National Volunteer Force Advisory Committee], the District Advisory Committee or the Unit Advisory Committee constituted under section 15;

Ben. Act
IV of 1866.

(b) "Calcutta" means the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866, together with the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866;

Ben. Act II
of 1866.

¹For Statement of Objects and Reasons see the *Calcutta Gazette, Extraordinary*, dated the 12th January, 1949, Part IV, p. 53; for proceedings of the West Bengal Legislative Assembly, see the proceedings of the meeting of the West Bengal Legislative Assembly held on the 24th January, 1948.

²The words "the Dominion of" were omitted by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

³The words "or subjects of an Acceding State" were omitted, *ibid*.

⁴The words within square brackets were substituted for the words "Provincial Government" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁵The words within square brackets were substituted for the words "the Provincial Advisory Committee" by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

(Sections 3—6.)

- (c) "Force" means the West Bengal National Volunteer Force;
- (d) "Officer" means an officer appointed under this Act;
- (e) "prescribed" means prescribed by rules made under this Act;
- (f) "subordinate other ranks" means subordinate other ranks appointed under this Act; and
- (g) "volunteer" means a person enrolled as a member of the West Bengal National Volunteer Force.

Constitu-
tion of
the
National
Volunteer
Force.

3. The ¹[State] Government may raise and maintain a volunteer force to be called the West Bengal National Volunteer Force and for that purpose enrol persons as volunteers from Calcutta and elsewhere in West Bengal:

Provided that the ¹[State] Government may establish all or any of the units of the Force as and when necessary.

Functions.

4. A volunteer, when called upon for duty, shall discharge such functions in relation to the protection of persons, the security of property and the preservation of the public peace in any area within West Bengal and such other functions as may be assigned to him by or under this Act.

Appoint-
ment of
officers and
subordi-
nate other
ranks.

5. The ¹[State] Government or any person empowered in this behalf by the ¹[State] Government may appoint a Provincial Commandant of the Force and such other officers and such subordinate other ranks for, and for any unit of, the Force as the ¹[State] Government may consider necessary and may prescribe the powers and duties of such officers and subordinate other ranks in addition to the powers and duties conferred by this Act. Every officer and subordinate other rank shall have the privileges and protection conferred on an officer or subordinate other rank by or under this Act.

Officers
and subor-
dinate
other ranks
in the
Force.

6. There shall be the following classes of officers and subordinate other ranks in the Force, namely:—

Officers.

- (1) Provincial Commandant,
- (2) Deputy Provincial Commandant,
- (3) District or Unit Commandant,
- (4) Company Commander.

¹The word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the adaptation of Laws Order, 1950.

[of 1949.]

(Sections 7, 8.)

Subordinate other ranks.

- (1) Platoon Commander,
- (2) Section Commander.

7. Notwithstanding anything contained elsewhere in this Act, the ¹[State] Government may, by notification in the *Official Gazette*, direct that one or more corps or units of the Force be constituted or formed for any particular region within West Bengal or for any specified purpose.

Constitu-
tion of any
separate
unit of the
Force.

8. (1) Any citizen of ²* * India or any person having a permanent domicile in West Bengal who may offer himself for enrolment in the Force and who satisfies the prescribed conditions may be eligible for enrolment therein by such authority, in such manner and for such period not exceeding five years as may be prescribed.

Enrolment
and remo-
val of a
member of
the Force.

(2) Every volunteer shall receive a certificate of appointment in the prescribed form and such certificate shall be issued by such authority as may be prescribed and thereupon he shall have the powers, privileges and protection conferred, and shall discharge the duties imposed, on a volunteer by or under this Act.

(3) Every volunteer enrolled under this Act shall undergo such preliminary and periodical training as may be prescribed.

(4) Every person enrolled as a volunteer under this Act shall be entitled to receive a certificate of discharge in the prescribed form on the expiration of the period for which he was enrolled and any such person may, prior to the expiration of that period, be discharged by such authority subject to such conditions as may be prescribed, and shall be so discharged on the recommendation of the Advisory Committee in this behalf.

(5) The prescribed authority may, subject to such conditions as may be prescribed,—

- (a) suspend, discharge, dismiss or remove any volunteer from his office and thereupon the certificate referred to in sub-section (2) shall cease to have effect, or
- (b) disband any unit constituted under this Act and thereupon every volunteer of such unit shall vacate office.

¹See footnote 1 on p. 520, *ante*.

²The words "the Dominion of" were omitted, by paragraph 3 of, and the Eleventh Schedule to the Adaptation of Laws Order, 1950.

³The words "or any subject of an Acceding State" were omitted, *ibid*.

(Sections 9—13.)

Posting of
a volunteer
to a Unit.

9. Every person enrolled as a volunteer under this Act may be posted for any period to any unit of the Force and thereupon he shall be bound to serve in the said unit for that period.

Calling out
of a mem-
ber of the
Force.

10. ¹(a1) The State Government or the Provincial Commandant, a Deputy Provincial Commandant, a Unit Commandant, or a District Superintendent of Police, if authorised by the State Government in this behalf, may at any time call upon in such manner and through such officer as may be prescribed, any volunteer for discharging anywhere in West Bengal any functions assigned to him by or under this Act.

(1) The Commissioner of Police in Calcutta and the District Magistrate elsewhere may at any time call upon, in such manner and through such officer as may be prescribed, any volunteer in their respective jurisdictions, for discharging any functions assigned to him by or under this Act.

(2) Any authority specified in sub-section (1) may at any time call upon the District or Unit Commandant, in such manner as may be prescribed, to mobilise any unit or a detachment of a unit under its jurisdiction for the purpose of maintenance of law and order.

(3) Whenever the services of any volunteer or a unit or the detachment of a unit are requisitioned, the requisitioning authority shall communicate the action taken by it to such authority as may be prescribed.

Powers,
privileges
and pro-
tection of
the Force.

11. (1) A volunteer, when called upon for duty under ²[sub-section (a1) or] sub-section (1) of section 10, shall have the same powers, privileges and protection as a Police Officer appointed under any Act for the time being in force.

(2) No prosecution shall be instituted against an officer or a subordinate other rank or a volunteer in respect of anything done or purported to be done in exercise of his powers or in the discharge of his duties as such, except with the previous sanction of the Commissioner of Police in Calcutta or the District Magistrate elsewhere.

Control by
officers of
the Police
Force.

12. A volunteer, when called upon for duty under ²[sub-section (a1) or] sub-section (1) of section 10 to aid the Police Force, shall work under the orders of or be under the control of such officers of the Police Force as may be prescribed.

Penalties.

13. (1) If a volunteer, without sufficient cause, neglects or refuses to obey the orders of any superior authority or officer whom he is bound to obey, or fails to discharge any

¹This sub-section was inserted by s. 2 of the West Bengal National Volunteer Force (Amendment) Act, 1950 (West Ben. Act LIV of 1950).

²These words, brackets, letter and figure within square brackets in secs. 11 and 12 were inserted by secs. 3 and 4, respectively, *ibid.*

[of 1949.]

(Sections 14—16.)

duty which he is bound to perform under this Act or any rule or regulation thereunder, or deserts his post, or is guilty of any wilful breach or disobedience of any provisions of this Act or of any rule or regulation thereunder, or lawful order made or issued thereunder by a competent authority, he shall be liable to be punished with simple imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees or with both.

(2) No prosecution shall be instituted against a volunteer for any offence punishable under sub-section (1), without the previous sanction of the Commissioner of Police in Calcutta or the District Magistrate elsewhere.

Act V of
1898.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence punishable under sub-section (1) shall be cognizable.

(4) Without prejudice to the foregoing provisions of this section, it shall also be competent for any prescribed authority to deal with the said offences otherwise than under the said provisions and to award one or more of such punishments as may be prescribed.

Act XLV
of 1860.

14. An officer or a subordinate other rank or a volunteer acting in the exercise of his powers or in the discharge of his duties under this Act or rules or regulations thereunder shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Members
of the
Force to be
public ser-
vants.

15. (1) The ¹[State] Government may, for the purpose of advising it on all matters of policy connected with the constitution and administration of the Force, constitute a ²[West Bengal National Volunteer Force Advisory Committee], District Advisory Committee and Unit Advisory Committee.

Advisory
Commit-
tees.

(2) The Committees shall be constituted in such manner and shall perform such functions as may be prescribed.

16. (1) The ¹[State] Government may make rules to carry out the purposes of this Act.

Rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the powers and duties of officers and subordinate other ranks referred to in section 5;

(b) the manner and conditions of, and the period for, enrolment of a volunteer and the authority by which such enrolment shall be made referred to in sub-section (1) of section 8;

¹See foot-note 1 on p. 520, ante.

²These words within square brackets were substituted for the words "Provincial Advisory Committee" by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

(Sections 17, 18.)

- (c) the period of preliminary and periodical training referred to in sub-section (3) of section 8;
- (d) the form of certificate of discharge referred to in sub-section (4) of section 8, and the authority and conditions referred to in that sub-section;
- (e) the manner in which and the officer through whom a volunteer may be called upon for discharging functions assigned to him by or under this Act;
- (f) the manner in which a District Commandant or a Unit Commandant may be called upon to mobilize a unit or a detachment of a unit referred to in sub-section (2) of section 10 and the authority to which intimation of such action referred to in the proviso to that sub-section shall be given;
- (g) the officer of the Police Force under whose order or control a volunteer shall work under section 12;
- (h) the authority by which and the manner in which offences may be dealt with under sub-section (4) of section 13;
- (i) the constitution and the functions of the Advisory Committees referred to in section 15;
- (j) the medical examination of persons offering themselves for enrolment, the organisation, discipline, training, arms, accoutrements and clothings, conditions of service, powers and duties of the volunteers; and
- (k) the remuneration, allowances, gratuities or compensation to be paid to a volunteer or his dependants.

Continu-
ance of
action
taken
under West
Bengal
Ordinance
XII of
1948.

17. Any appointment, enrolment or rules made or any Committee constituted or any notification issued or anything done or any action taken or any proceedings commenced in exercise of any power conferred by or under the West Bengal National Volunteer Force Ordinance, 1948, shall, on the said Ordinance ceasing, to be in operation, be deemed to have been made, constituted, issued, done, taken or commenced in exercise of the powers conferred by or under this Act as if this Act had commenced on the 27th day of November, 1948.

West Ben.
Ord. XII
of 1948.

Power to
make
regulations.

18. The Provincial Commandant may make regulations consistent with this Act and the rules made thereunder providing generally for all the details connected with the organisation and personnel of the Force and for the duties, training including courses of training, instructions, clothing, equipment, allowances and leave of persons enrolled.

West Bengal Act II of 1949

THE CALCUTTA *THIKA* TENANCY ACT, 1949.

CONTENTS.

CHAPTER I.

PRELIMINARY.

Section.

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II.

INCIDENTS OF *Thika* TENANCIES.

3. Grounds on which a *thika* tenant may be ejected:
4. Notice before ejectment.
5. Proceedings for ejectment.
6. Stay of ejectment for arrears of rent if the amount of arrears and damages are deposited with the Controller.
7. Restoration of possession where landlord does not use the land for the purpose for which the *thika* tenant was ejected.
8. Surrender.
9. Abandonment.
10. Consequences of the determination of interests of *thika* tenants in certain cases.
11. *Omitted.*

CHAPTER III.

PROVISIONS AS TO RENT OF *Thika* TENANCIES.

12. Payment of rent.
13. Time and place for payment of rent.
14. Appropriation of payments.
15. *Thika* tenant entitled to receipt for rent.
16. Penalty for withholding receipts.
17. Deposit of rent on refusal of the landlord to accept.
18. Deposit of rent in certain other cases.
19. Receipt granted by the Controller for rent deposited to be a valid acquittance.
20. Disposal of rent deposited under section 17.
21. Disposal of rent deposited under section 18.
22. Saving.

[West Ben. Act II of 1949.]

- 23. Interest on arrears.
- 24. Restrictions on enhancement of rent.
- 25. Enhancement of rent.
- 26. Reduction of rent by the Controller.

CHAPTER IV.

APPEALS AND CERTAIN SPECIAL PROCEDURES.

- 27. Appeal, review and execution.
- 28. *Omitted.*
- 29. *Omitted.*
- 30. Bar to application of Act to certain lands.
- 31. Restriction or exclusion of Act by agreement.
- 32. Power to enter and inspect premises, to require information and to summon witnesses.
- 33. Repeal and saving.
- 34. Rules.

West Bengal Act II of 1949

THE CALCUTTA THIKA TENANCY ACT, 1949.¹

AMENDED ... West Ben. Act VI of 1953.

ADAPTED ... The Adaptation of Laws Order, 1950.

[The 28th February, 1949.]

An Act to make better provision relating to the law of landlord and tenant in respect of thika tenancies in Calcutta.

WHEREAS it is expedient to make better provision relating to the law of landlord and tenant in respect of *thika* tenancies in Calcutta;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Calcutta *Thika* Tenancy Act, 1949. Short title, extent and commencement.

Ben. Act
II of
1923.

Ben. Act
II of
1866.

West Ben.
Ord. XI
of 1948.

(2) It extends to Calcutta as defined in clause (11) of section 3 of the Calcutta Municipal Act, 1923² and such suburbs of Calcutta as may have been or may hereafter be notified under section 1 of the Calcutta Suburban Police Act, 1866 and are not included within Calcutta as so defined and also to the Municipality of Howrah.

(3) It shall come into force on the day on which the Calcutta *Thika* Tenancy Ordinance, 1948, ceases to operate.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(1) “*Bharatia*” means any person by whom, or on whose account, rent is payable for any structure or part of a structure erected by a *thika* tenant in his holding;

- (2) “Controller” means an officer appointed as such by the State Government for an area to which this Act extends and includes any person appointed by the State Government to exercise all or any of the duties conferred by this Act,
 - all or any of the powers on the Controller.

¹For Statement of Objects and Reasons, see the Calcutta Gazette, Extraordinary, dated 17th January, 1949, Part IV, page 78; for Proceedings of the West Bengal Legislative Assembly, see the Proceedings of the West Bengal Legislative Assembly, 1949, Vol. IV, pages 69-74.

²The Calcutta Municipal Act, 1923, was repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951).

³The word “State” was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws order, 1950.

(Chapter I.—Preliminary.—Section 2.)

- (3) “holding” means a parcel or parcels of land held by any person as a *thika* tenant under one lease or one set of conditions whether such tenant has held the land before or after the commencement of this Act;
- (4) “prescribed” means prescribed by rules made under this Act;
- (5) “*thika* tenant” means any person who holds, whether under a written lease or otherwise, land under another person, and is or but for a special contract would be liable to pay rent, at a monthly or at any other periodical rate, for that land to that another person and has erected or acquired by purchase or gift any structure on such land for a residential, manufacturing or business purpose and includes the successors in interest of such person, but does not include a person—
- who holds such land under that another person in perpetuity; or
 - who holds such land under that another person under a registered lease, in which the duration of the lease is expressly stated to be for a period of not less than twelve years; or
 - who holds such land under that another person and uses or occupies such land as a *khattal*.
- (6) all words and expressions used but not defined in this Act and used in the Transfer of Property Act, 1882, or the Bengal Tenancy Act, 1885, have the same meanings as in those Acts.

IV of
1882.
VIII of
1885.

¹The new clause (5) was substituted for the original clause by s. 2 of the Calcutta Thika Tenancy (Amendment) Act, 1953 (West Ben. Act VI of 1953).

The following commencement and continuance provisions have been made in sub-section (2) of section 1 and section 9 of the Calcutta Thika Tenancy (Amendment) Act, 1953, namely:—

(Amendment) will come into force immediately on the Calcutta Thika Tenancy Ordinance, 1952 (West Ben. Ord. XV of 1952), ceasing to operate:

Provided that the provisions of the Calcutta Thika Tenancy Act, 1949, as amended by this Act (sections of the Calcutta Thika Tenancy Act, 1949, provisions of section 9, also amended by Act VI of 1953) shall, subject to the to all suits, appeals and proceedings be deemed to have always applied

- before any Court, or
- before the Controller, or
- before a person deciding an appeal under section 21 of the said Act, on the date of the commencement of the Calcutta Thika Tenancy (Amendment) Ordinance, 1952 (West Ben. Ord. XV of 1952).

9. **Continuance.**—Any proceeding commenced under sub-section (2) of section 5 of the Calcutta Thika Tenancy (Amendment) Ordinance, 1952, shall, on the said Ordinance ceasing to operate, be continued as if sub-sections (2), (3) and (4) of that section and the *Explanation* to that section were in force.

II of 1949.]

(Chapter II.—Incidents of thika tenancies.—Section 3.)

CHAPTER II.

INCIDENTS OF *Thika* TENANCIES.

3. Notwithstanding anything contained in any other law for the time being in force or in any contract, a *thika* tenant shall, subject to the provisions of this Act, be liable to ejection from his holding on one or more of the following grounds and not otherwise, namely:—

Grounds on which a *thika* tenant may be ejected

(i) on the ground that he has failed to pay an arrear of rent due to the landlord in respect of the holding:

¹[Provided that no tenant paying rent at intervals of a month or less shall be evicted unless he has made at least three successive defaults in such payment.];

(ii) on the ground that he has used the land comprised in his holding in a manner which renders it unfit for any of the purposes mentioned in clause (5) of section 2 or that he has broken a condition consistent with this Act on breach of which he is under the terms of a contract between himself and his landlord, liable to be ejected;

(iii) on the ground that he has refused to agree to pay rent at such enhanced rate as may be determined under section 25;

(iv) except during any period limited by a registered lease under which a *thika* tenant may hold the land comprised in the holding, on the ground that the land is required by the landlord for his own occupation or for the purpose of building on the land or otherwise developing the land by discontinuing ^{2***} letter to *thika* tenants;

• (v) on the ground that he has failed himself to use or occupy a major part of the holding for his own residential, manufacturing or business purpose for more than six consecutive months:

• ³[Provided that in such a case the *thika* tenant may continue to be in possession of that part of the structure and land, which he himself uses or occupies and shall in respect of such part be deemed to be a tenant within the meaning of

¹This proviso within square brackets was added by s. 3(a) of the Calcutta *Thika* Tenancy (Amendment) Act, 1953 (West Ben. Act VI of 1943).

²The words "the system of" were omitted by s. 3(b), *ibid*.

³This proviso within square brackets was added by s. 3(c), *ibid*.

[West Ben. Act

(Chapter II.—Incidents of thika tenancies.—Sections 4, 5.)

the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950,¹ holding under the landlord.] West Ben. Act XVII of 1950.

(vi) when he holds the land comprised in the holding under a registered lease, on the ground that the term of the lease has expired.

Notice
before
ejectment.

4. It shall not be competent for a landlord to eject any *thika* tenant from his holding unless the landlord has given the *thika* tenant notice in the manner provided in section 106 of the Transfer of Property Act, 1882,—

- (a) in the case where he wishes to eject the *thika* tenant on any of the grounds specified in clauses (i), (ii), (iii) and (v) of section 3 at least one month's notice in writing expiring with the end of a month of the tenancy; and
- (b) in the case where he wishes to eject the *thika* tenant on the ground specified in clause (iv) of section 3 at least three months' notice in writing expiring with the end of a month of the tenancy:

Provided that—

- (i) no *thika* tenant shall be ejected from his holding on the ground specified in clause (i) of section 3 during the period mentioned in sub-section (I) of section 9, and
- (ii) save as otherwise provided in any contract in writing, no *thika* tenant shall be ejected from his holding on any of the grounds specified in clauses (iv) and (v) of section 3, except on payment to the *thika* tenant or on depositing with the Controller for payment to the *thika* tenant such compensation as may be agreed upon between the landlord and the *thika* tenant or, in the case where they do not agree, as may be determined in the prescribed manner by the Controller on application by the landlord or the *thika* tenant.

Proceed-
ings for
ejectment.

5. (1) Notwithstanding anything contained in any other law for the time being in force ^{****} a landlord wishing to eject a *thika* tenant on one or more of the grounds specified in section 3 shall apply in the prescribed manner to the Controller for an order in that

¹West Ben. Act XVII of 1950 was repealed by West Bengal Act XII of 1956.

²The words "but subject to the provisions of section 28," were omitted by s. 4 of the Calcutta Thika Tenancy (Amendment) Act, 1953 (West Ben. Act VI of 1953).

[11 of 1949.]

(Chapter II.—Incidents of thika tenancies.—Sections 6, 7.)

behalf and, on receipt of such application, the Controller shall, after giving the *thika* tenant a notice to show cause within thirty days from the date of service of the notice why the application shall not be allowed and after making an inquiry in the prescribed manner either allow the application or reject it after recording the reasons for making such order, and, if he allows the application, shall make an order directing the *thika* tenant to vacate the holding and, subject to the provisions of section 10, to put the landlord in possession thereof.

(2) No order allowing an application under sub-section (1) shall be made in a case where compensation is payable under clause (ii) of the proviso to section 4 unless and until the amount of compensation so payable has been either paid to the *thika* tenant or deposited with the Controller.

6. Every order made under section 5 allowing an application for ejectment of a *thika* tenant on the ground that he has failed to pay an arrear of rent due to the landlord in respect of his holding and directing the *thika* tenant to vacate the holding and put the landlord in possession thereof shall specify the amount of the arrear and of the interest, if any, due thereon, and no such order shall be executed if that amount, the costs of the proceedings arising out of such application and such damages as the Controller may allow, are deposited with the Controller within thirty days from the date of the order.

Stay of ejectment for arrears of rent if the amount of arrears and damages are deposited with the Controller.

7. If an order under section 5 directing a *thika* tenant to vacate any land comprised in a holding on any of the grounds specified in clause (iv) of section 3 is made and the landlord who recovers possession of the land as a result of such order does not within six months from the date on which he recovers such possession occupy the land himself or commence the building on, or the development of, the land or re-lets it within six months of the said date to any *thika* tenant other than the previous *thika* tenant without the permission of the Controller obtained in the prescribed manner, the Controller may on application in writing being made to him in this behalf by the *thika* tenant from whom the landlord has so recovered possession of the land within nine months from the said date, make an order directing the landlord to restore the *thika* tenant to possession of the land from such date and subject to such condition as may be specified in the order, or to pay him such compensation as may be fixed by the Controller:

Restoration of possession where landlord does not use the land for the purpose for which the *thika* tenant was ejected.

Provided that the Controller may, on the application of the landlord, extend the period within which the building on, or the development of, the land is to be commenced by two months at a time and six months in all.

[West

(Chapter II.—Incidents of thika tenancies.—Sections 8—10.)

Surrender.

8. (1) A *thika* tenant not bound by any lease or other agreement for a fixed period may, at the end of a month of the tenancy, surrender his holding, provided that he gives to his landlord at least one month before he surrenders, notice of his intention to do so.

(2) When a *thika* tenant has surrendered his holding the landlord may, subject to the provisions of section 10, enter on the holding and either let it to another tenant or occupy it himself or dispose of it in any way he may think fit.

Abandonment.

9. (1) When a *thika* tenant voluntarily abandons his holding without notice to the landlord and without arranging for the payment of his rent as it falls due, the landlord may, at any time after the expiration of a period of two months from the date of such voluntary abandonment, file the notice referred to in sub-section (2) and subject to the provisions of sub-section (3) and of section 10 enter on the holding and let out the same to another tenant or occupy it himself.

(2) A landlord who intends to enter on a holding under this section shall file a notice in the prescribed form with the Controller, stating that he has treated the holding as abandoned and intends to enter on it accordingly; and the Controller shall within fifteen days from the date on which the notice is so filed cause such notice to be published in the prescribed manner.

(3) After the publication of the notice under sub-section (2), the *thika* tenant may apply to the Controller at any time not later than the expiration of one month from the date of the publication of such notice for the cancellation of such notice and thereupon the Controller may, on being satisfied after such inquiry as he considers necessary that the *thika* tenant is entitled to continue in possession, cancel the notice and direct that the *thika* tenant shall continue in possession of the holding subject to payment of the arrears of rent due on the date on which the notice is so cancelled. If the *thika* tenant does not make any application under this sub-section or his application under this sub-section is rejected, the landlord may enter on the holding subject to the provisions of section 10.

Consequence of determination of interests of thika tenants in certain cases.

10. (1) Notwithstanding anything to the contrary contained in any contract, on the determination of the interest of a *thika* tenant in the land comprised in a holding as a result of ejection from the holding of, or of surrender or abandonment of the holding by, the *thika* tenant, or otherwise, any structure ¹[standing upon] such land and existing on the date of such determination shall vest in the landlord.

¹These words within square brackets were substituted for the words, "erected by the *thika* tenant on" by s. 5(1) of the Calcutta *Thika* Tenancy (Amendment) Act, 1953 (West Ben. Act VI of 1953).

II. of 1949.]

(Chapter II.—Incidents of thika tenancies.—Section 11—
Chapter III.—Provisions as to rent of thika tenancies—
Section 12.)

West Ben.
Act
XXXVIII
of 1948.

(2) When any structure ¹[standing on any holding of a *thika* tenant] vests in the landlord under sub-section (1) otherwise than as a result of ejectment of the *thika* tenant from the holding on any of the grounds specified in clause (iv) of section 3, ²[any *Bharatia* in possession of such structure or any part thereof, shall without any application being made] be entitled to continue in such possession and shall be ³[deemed to be a tenant in respect of such structure or part thereof, as the case may be,] within the meaning of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948⁴, holding under the landlord on the terms and conditions on which such *Bharatia* had been holding immediately before ⁵[such structure] vested in the landlord: •

Provided that nothing in this sub-section shall prevent either the landlord or such *Bharatia* so deemed to be a tenant holding under the landlord, from proceeding under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948⁴, for fixing the standard rent payable in respect of ⁶[such structure or part thereof; as the case may be.]

11. (*Devolution or transfer of holding of a thika tenant.*)
—Omitted by s. 6 of the Calcutta Thika Tenancy (Amendment) Act, 1953 (West Ben. Act VI of 1953.)

CHAPTER III.

PROVISIONS AS TO RENT OF *Thika* TENANCIES.

12. Any rent or instalment of rent payable by a *thika* tenant shall be paid, where there is a contract in writing in this behalf between the landlord and the *thika* tenant, within the time fixed in the contract or, in the absence of any such contract, by the fifteenth day of the month next following the month or period for which the rent is payable. Payment
of rent.

¹These words within square bracket were substituted for the words "erected in any holding by a *thika* tenant" by s. 5(2) of the Calcutta *thika* Tenancy (Amendment) Act, 1953 (West Ben. Act VI of 1953).

²These words within square brackets were substituted for the words, "any *Bharatia* in possession of such structure shall" by s. 5(2) (b), *ibid.*

³These words within square brackets were substituted for the words "deemed to be a tenant" by s. 5(2) (c), *ibid.*

⁴West Ben. Act XXXVIII of 1948 was repealed by West Ben. Act XVII of 1950 and again West Ben. Act XVII of 1950 was repealed by West Ben. Act XII of 1956.

⁵These words within square brackets were substituted for the words "such structures" by s. 5(2) (d) of the Calcutta *thika* Tenancy (Amendment) Act 1953 (West Ben. Act VI of 1953).

⁶These words within square brackets were substituted for the words "such structure" by s. 5(2) (e), *ibid.*

[West Ben. Act

(Chapter III.—Provisions as to rent of thika tenancies.—
Sections 13—16.)Time and
place for
payment
of rent.

13. (1) Every *thika* tenant shall pay or tender rent or each instalment of rent before sunset of the latest day by which it is payable under the provisions of section 12:

Provided that a *thika* tenant may pay or tender the rent payable for a month or period at any time during such month or period before it falls due.

(2) The payment or tender of rent may be made—

(i) at the landlord's local office or at such other convenient place as may be appointed in that behalf by the landlord; or

(ii) by postal money order in the manner prescribed.

A tender may also be made by depositing the rent with the Controller in accordance with the provisions of section 17 or section 18.

(3) Any rent or instalment of rent which is not duly paid within the time referred to in section 12 or is not duly deposited with the Controller within the time referred to in section 17 or section 18 shall be deemed to be an arrear.

Appropriation
of pay-
ments.

14. (1) When a *thika* tenant makes a payment on account of rent, he may declare the month or period in respect of which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such month or period as the landlord thinks fit.

Thika
tenant en-
titled to
receipt for
rent.

15. (1) Every *thika* tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord or his authorised agent a written receipt for the amount paid by him, signed by the landlord.

(2) A counterfoil of the receipt shall be prepared and retained by the landlord or his authorised agent.

(3) The receipt and counterfoil shall be in such form and shall contain such particulars as may be prescribed.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

Penalty for
withhold-
ing re-
ceipts.

16. If a landlord without reasonable cause refuses or neglects to deliver to a *thika* tenant a receipt containing the particulars required by section 15 for any rent paid by the tenant, the Controller may, on application made in this

[1 of 1949.]

(Chapter III.—Provisions as to rent of thika tenancies.—
Sections 17, 18.)

behalf by the tenant within three months from the date of
payment by order direct the landlord to pay the tenant
that rent

Page 535—

*In section 17,—

- (i) in clause (b) of sub-section (1), omit the words "together with the cost of transmission by postal money order of such money to the landlord"; and rent the Deposit of rent on refusal of the landlord to accept.
- (ii) after sub-section (1), insert the following sub-section, thin the

"(1a) The application referred to in sub-section (1) shall be accompanied by a copy thereof along with writing to the prescribed fee for sending such copy to the landlord by registered post with acknowledgment of receipt any from such Controller payable due.".

(Omitted and inserted by West Ben. Act XXIV of 1959, section 2.) per with
by order

[No. 5, dated the 1st May, 1961]

Explanation.—A landlord shall not for the purposes of this sub-section be deemed to have refused to accept any rent unless the rent is remitted by the *thika* tenant by postal money order within the time specified and in the manner referred to in section 13 and the rent so remitted is returned to the *thika* tenant by the postal authorities as undelivered either on account of the landlord having refused to accept payment thereof or for any other cause.

(2) The deposit referred to in clause (a) of sub-section (1) shall be made within a fortnight of the date on which the rent remitted by postal money order is returned to the *thika* tenant by the postal authorities as undelivered.

18. (1) In either of the following cases, namely:—

- (a) when any rent is payable jointly to two or more co-sharer landlords and the *thika* tenant is unable to obtain a joint receipt from them for the rent and no person has been empowered to receive the rent on their behalf,

Deposit of rent in certain other cases.

- (b) when a dispute has arisen as to the person who is entitled to receive the rent, the *thika* tenant may by an application in writing containing such particulars as may be prescribed deposit such rent with the Controller and may continue to deposit with the Controller any subsequent rent which becomes due from such tenant until the *thika* tenant is able to obtain a joint receipt from the co-sharer landlords or a person has been

(Chapter III.—Provisions as to rent of thika tenancies.—
Sections 19, 20.)

empowered to receive the rent on their behalf, or until such dispute has been settled by the decision of a competent Court or by settlement between the parties, as the case may be.

(2) The deposit of rent referred to in sub-section (1) shall be made within the period within which it is payable under section 18.

Receipt
granted by
the Con-
troller for
rent depo-
sited to be
a valid
acquitt-
ance.

19. If it appears to the Controller to whom application for deposit is made under section 17 or section 18 that the applicant is entitled to deposit the rent under any of those sections, he shall receive the rent deposited and give a receipt for it under the seal of the Court and such receipt shall operate as an acquittance for the amount of the rent payable by the *thika* tenant and deposited as aforesaid, in the same manner and to the same extent as if the amount of the rent had been received—

in cases referred to in clauses (a) and (b) of sub-section (1) of section 17, by the person specified in the application as the person to whose credit the deposit was to be entered;

in cases referred to in clause (a) of sub-section (1) of section 18, by the co-sharers to whom the rent is due; and

in cases referred to in clause (b) of sub-section (1) of section 18, by the person specified in the application as the person to whose credit the deposit was to be entered.

Page 536—

* For section 20, substitute the following section, namely :—

“Disposal
of rent de-
posited
under sec-
tion 17.

20. On any deposit being made under section 17, the Controller shall send in the prescribed manner the copy of the application to the landlord and the amount lying in deposit may, in such manner as may be prescribed, be withdrawn by the landlord on application made in that behalf and if such amount is not withdrawn before the expiration of three years from the date of deposit, it may, in the absence of any order of a Civil Court to the contrary, be repaid to the tenant on his application and on his returning the receipt given by the Controller under section 19:

Provided that before passing any order for repayment of the amount to the tenant the Controller shall give a notice to the landlord by registered post at the last known address of such landlord and shall also publish the notice in his office and shall not pass any order for repayment until after the expiry of thirty days from the date of issue of such notice by post. The cost of transmission by post of such notice shall be deducted from the amount in deposit in accordance with such procedure as may be prescribed.”

(Substituted by West Ben. Act XXIV of 1959, section 3).

[No. 5, dated the 1st May, 1961.]

7 the
postal
clause
ssion
ll be
oney
; the
such
sub-
rned
ceipt
ount
made
lica-
ad if
on of
may,
rary,
his
hom

[1 of 1949.]

*(Chapter III.—Provisions as to rent of thika tenancies.—
Sections 21, 22.)*

21. (1) When the Controller receives a deposit under section 18, he shall forthwith cause to be affixed in a conspicuous place at his office a notification of the receipt thereof containing a statement of all material particulars, and, if the amount of the deposit is not paid away under sub-section (2) within the period of fifteen days next following the date on which the notification is so affixed, the Controller shall forthwith in cases referred to in clause (a) of sub-section (1) of section 18 cause a notice of the receipt of the deposit to be posted free of charge at the landlord's local office, if any, and at some conspicuous place in the locality in which the holding is situated, and, in cases referred to in clause (b) of sub-section (1) of the said section, cause a like notice to be served free of charge on every person who, he has reason to believe, claims or is entitled to the deposit.

Disposal of
rent deposited under
section 18.

(2) The Controller may pay the amount of any deposit notified under sub-section (1) to any person who proves to his satisfaction to be entitled to the same or is entitled to the amount as a result of a settlement referred to in sub-section (1) of section 18 or he may, if he thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(3) If no payment is made under sub-section (2) before the expiration of three years from the date of notice issued under sub-section (1) or three months after the decision of the Civil Court, whichever is later, the amount deposited may in the absence of any order of a Civil Court to the contrary be repaid to the depositor upon his application and on his returning the receipt given by the Controller when the rent was deposited.

22. (1) When a landlord accepts rent in respect of any holding sent by postal money order by a *thika* tenant under clause (ii) of sub-section (2) of section 13 or by the Controller under section 21 or withdraws any rent deposited under section 17 or section 18, the fact of this acceptance or withdrawal shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the postal money order form or in the application for deposit of such rent.

Saving.

(2) No suit, prosecution or other legal proceeding shall be instituted against the '[Government]' or against any officer of the '[Government]' in respect of anything done by the Controller receiving a deposit under section 17 or section 18; but nothing in this Act shall prevent any person

¹This word within square brackets was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

[West

(Chapter III.—Provisions as to rent of thika tenancies.—
Sections 23—26.—Chapter IV.—Appeals and certain
special procedures.—Section 27.)

entitled to receive any amount so deposited from recovering the same from any person to whom it has been paid under section 20 or section 21.

Interest on
arrears.

23. Any arrear of rent shall bear simple interest at the rate of six and a quarter *per centum per annum* from the expiry of the time within which the rent or the instalment of rent is payable under the provisions of section 12 or is to be deposited under section 17 or section 18, as the case may be, to the date of payment or of the institution of the suit, whichever date is earlier.

Restric-
tions on
enhance-
ment of
rent.

24. The rent of a *thika* tenant shall not be enhanced except as provided in this Act.

Enhance-
ment of
rent.

25. (1) The rent payable by a *thika* tenant for his holding may be enhanced by the Controller on application made to the Controller by the landlord in the prescribed manner on either or both of the following grounds, namely:—

- (a) that the value of the holding has increased;
- (b) that the landlord has effected some improvement to the land at his own cost which has increased the value of the holding:

Provided that no rent shall be enhanced under this sub-section so as to exceed the rent previously payable by the *thika* tenant by more than twelve and a half *per centum*.

(2) The rent fixed under sub-section (1) shall not be further enhanced during three years next following the date on which it has been last so enhanced.

Reduction
of rent
by the
Controller.

26. Any rent payable by a *thikā* tenant which has been settled within a period of three years immediately before the commencement of this Act, may be reduced by the Controller on application made in that behalf by the *thika* tenant if the Controller considers that the rate of rent so settled is unfair and inequitable having regard to the prevailing rate of rent payable by *thika* tenants of lands of a similar description and with similar advantages in the locality.

CHAPTER IV.

APPEALS AND CERTAIN SPECIAL PROCEDURES.

Appeal,
review and
execution.

27. (1) Any person aggrieved by an order of the Controller may, within thirty days from the date of the order, present an appeal in writing—

- (a) in respect of any holding in the Presidency town of Calcutta, to the Chief Judge of the Court of Small Causes of Calcutta; and

[11 of 1949.]

*(Chapter IV.—Appeals and certain special procedures.—
Section 27.)*

(b) in respect of any holding elsewhere, to the District Judge of the district in which the holding concerning which such order is made is situated.

(2) The State Government may, by notification, appoint any person who has exercised the powers of a District Judge to hear appeals presented under clause (a) of sub-section (1) to the Chief Judge of the Court of Small Causes of Calcutta and may, by notification, also appoint any person who is a judicial officer not below the rank of a subordinate judge to hear appeals presented under clause (b) of the said sub-section to a District Judge.

(3) The Chief Judge of the Court of Small Causes of Calcutta to whom an appeal is presented under clause (a) of sub-section (1) or a District Judge to whom an appeal is presented under clause (b) of that sub-section may transfer such appeal to any person appointed to hear any such appeal under sub-section (2) and may withdraw any appeal so transferred and either hear and dispose of it himself or transfer it to any other person appointed to hear such appeals under sub-section (2).

(4) The Chief Judge or the District Judge or any person appointed under sub-section (2) to whom an appeal is transferred under sub-section (3), as the case may be, shall then send for the record of the case from the Controller and after perusing the record and, if necessary, taking such evidence himself or personally making such further inquiries as he thinks fit, shall make an order deciding the appeal after giving the parties an opportunity of being heard.

(5) Subject to such rules as may be made under this Act, any order passed under this Act by the Controller, the Chief Judge of the Court of Small Causes of Calcutta, or a District Judge or a person appointed under sub-section (2) may be reviewed by the person who passed the order on the ground of the discovery of any new and important matter or evidence or on account of some mistake or error apparent on the face of the record or for any other sufficient cause:

Provided that before any order is passed under this sub-section which is likely to affect any person adversely such person shall be given a reasonable opportunity of being heard.

(6) An order under sub-section (4) made by the Chief Judge or the District Judge or a person appointed under sub-section (2), as the case may be, or, subject to such order, ²[if any,] an order made by the Controller under this Act, shall, subject to the provisions of sub-section (5), be

¹See foot-note 3 on page 527, *ante*.

²These words within square brackets were inserted by s. 7 of the Calcutta Thika Tenancy (Amendment) Act, 1953 (West Ben. Act VI of 1953).

[West Ben. Act

*(Chapter IV.—Appeals and certain special procedures.—
Sections 28—32.)*

final and may be executed by the Controller in the manner provided in the Code of Civil Procedure, 1908, for the execution of decrees. Act V of 1908.

28. *(Power of Court to rescind or vary decrees and orders in certain cases.)—Omitted by s. 8 of the Calcutta Thika Tenancy (Amendment) Act, 1953 (West Ben. Act VI of 1953).*

29. *(Application of Act to pending suits and proceedings.)—Omitted by s. 8 of the Calcutta Thika Tenancy (Amendment) Act, 1953 (West Ben. Act VI of 1953).*

Bar to
application
of Act to
certain
lands.

30. Nothing in this Act shall apply to—

- (a) ¹[Government] lands,
- (b) any land vested in or in the possession of—
 - (i) the ²State Government,
 - (ii) a port authority of a major port, or
 - (iii) a railway administration, or
 - (iv) a local authority, or
- (c) any land which is required for carrying out any of the provisions of the Calcutta Improvement Act, 1911.

Ben. Act
V of 1911.

Restriction or exclusion of Act by agreement.

31. Nothing in any contract between a landlord and a *thika* tenant made after the commencement of this Act shall take away or limit the rights of such tenant as provided for by this Act, and any contract which is made in contravention of or which is inconsistent with any of the provisions of this Act shall be void and without effect to the extent of such contravention or inconsistency.

Power to enter and inspect premises, to require information and to summon witnesses.

32. (1) For the purposes of any inquiry under this Act, the Controller and any person deciding an appeal under section 27, may,—

- (a) enter and inspect any premises at any time between sunrise and sunset;
- (b) authorise any person subordinate to him to enter and inspect any premises between sunrise and sunset; or

¹See foot-note 1 on page 537, *ante*.

²See foot-note 3 on page 527, *ante*.

Thika tenant may get supply of electricity to the building and structures thereon without the permission of the landlord.

After section 32, insert the following section, namely :—

- 32A.** (1) A *thika* tenant desiring to get supply of electricity from a licensee, as defined in clause (h) of section 2 of the Indian Electricity Act, 1910, may, if the landlord IX of 1910 refuses or withholds his consent to such supply, apply to the Controller, setting out the scheme for such supply.
- (2) On receipt of such application the Controller may, after giving the landlord an opportunity of being heard, permit the *thika* tenant to get the supply in accordance with the scheme set out in the *thika* tenant's application or in accordance with any modified scheme.
- (3) On such permission being given, the landlord shall be deemed, notwithstanding anything contained in any other law for the time being in force, to have given the requisite consent under sub-section (2) of section 12 of the Indian Electricity Act, 1910, and the licensee shall not be liable to the landlord for trespass for steps taken for supply of electricity according to the said permission."

(Inserted by West Ben. Act XXIV of 1959, section 4.)

[No. 5, dated the 1st May, 1961.]

the same means and, so far as may be, in the same manner as is provided in the case of a Court by the Code of Civil Procedure, 1908. Act V of 1908.

Repeal and saving.

33. On the expiry of the Calcutta *Thika* Tenancy Ordinance, 1948, the provisions of section 8 of the Bengal General Clauses Act, 1899, shall apply as if it were an enactment then repealed by a West Bengal Act. West Ben. Ord. XI of 1948. Ben. Act I of 1899.

Rules.

- 34.** (1) The State Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—
- (a) the manner of determination of compensation referred to in the proviso to section 4;
 - (b) the manner in which a landlord may apply to the Controller and the manner in which the Controller may make inquiries under section 5;
 - (c) the manner of obtaining permission of the Controller referred to in section 7;
 - (d) the form of notice and the manner of publication of such notice under sub-section (2) of section 9;
 - (e) the manner of payment or tender of rent by postal money order referred to in clause (ii) of sub-section (2) of section 13;
 - (f) the form of receipt and of the counterfoil referred to in sub-section (3) of section 15, and the particulars to be specified in such receipt and counterfoil;

*In sub-section (2) of section 34,—

Act II of 1948.]

(1) for clause (h), substitute the following clause, namely :—

procedures.—

“(h) the manner of sending the copy of the application to the landlord, and of withdrawal by the landlord of the amount in deposit, referred to in section 20 and the procedure for deducting from the amount in deposit the cost of transmission by post of the notice to the landlord, referred to in the proviso to section 20;” and

lications for of section 17

t of rent by section 20;

(2) after clause (n), add the following clause, namely :—

“(o) any other matter which is required to be or may be prescribed.”.

enhancement ion 25;

(Substituted and added by West Ben. Act XXIV of 1959, section 5.)

[No. 5, dated the 1st May, 1961.]

s under this udge of the the District

udge and any person appointed under sub-section (2) of section 27;

(k) the procedure for review of orders referred to in sub-section (5) of section 27;

(l) the procedure for summoning and enforcing the attendance of witnesses and compelling the production of documents referred to in sub-section (2) of section 32;

(m) the manner of service of notices issued under this Act where the mode of such service is not provided in this Act; and

(n) the charging or remitting of costs and fees and the fixing of a scale of costs and fees.

West Bengal Act XIII of 1949¹

THE BENGAL NURSES (WEST BENGAL AMENDMENT) ACT, 1949.

ADAPTED ... The Adaptation of Laws Order, 1950.

[7th April, 1949.]

An Act to amend the Bengal Nurses Act, 1934.

Ben. Act X
of 1934.

WHEREAS it is expedient to amend the Bengal Nurses Act, 1934, for the purposes and in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Nurses (West Bengal Amendment) Act, 1949.

Short
title and
commence-
ment.

(2) It shall come into force at once:

Provided as follows:—

(a) that the term of office of the members constituting the Council at the commencement of this Act, shall continue, as if this Act had not been passed, until a date to be appointed in this behalf by the ²[State] Government by notification in the *Official Gazette*;

(b) that the term of office of members appointed after the commencement of this Act to fill casual vacancies in that Council shall also continue until the said date.

2. [Amendment of section 4 of Bengal Act X of 1934—Incorporated in the principal Act.]

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 28th September, 1948, Part IV, p. 989; for Proceedings of the West Bengal Legislative Assembly, see the Proceedings of the meeting of the West Bengal Legislative Assembly, held on the 24th January, 1949.

²The word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950

West Bengal Act XIV of 1949¹

THE WEST BENGAL MOLASSES CONTROL ACT, 1949.

AMENDED

{ West Ben. Act XIII of 1952.
West Ben. Act V of 1954.
West Ben. Act XI of 1956.

ADAPTED

The Adaptation of Laws Order, 1950.

[31st March, 1949.]

An Act to provide for control of the production, supply and distribution of, and trade in, molasses in West Bengal.

WHEREAS it is expedient to provide for control of the production, supply and distribution of, and trade in, molasses in West Bengal;

It is hereby enacted as follows:—

Page 545—

For sub-section (4) of section 1, substitute the following sub-section, namely:—

“(4) It shall remain in force until the 31st day of March, 1961.”.

(Substituted by West Ben. Act IV of 1958, section 2.)

[No. 3 dated the 1st December, 1958.]

Page 545—

In sub-section (4) of section 1, for the figure “1961”, substitute the figure “1966”.

(Substituted by West Ben. Act VII of 1961, section 2.)

[No. 8, dated the 1st August, 1962.]

Powers to control production, supply and distribution of, and trade in, molasses.

Page 545—

In sub-section (1) of section 3, omit the words “or prohibiting”.

(Omitted by West Ben. Act VII of 1961, section 3.)

[No. 8, dated the 1st August, 1962.]

Sub-section (2) was substituted for the original sub-section by s. 2 of the West Bengal Molasses Control (Amendment) Act, 1952 (West Ben. Act XIII of 1952). Thereafter the words “seven years” were substituted for the words “five years” by s. 2 of the West Bengal Molasses Control (Amendment) Act, 1954 (West Ben. Act V of 1954). Again the words “nine years” were substituted for the words “seven years” by s. 2 of the West Bengal Molasses Control (Amendment) Act, 1956 (West Ben. Act XI of 1956).

¹The word within square brackets was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Section 3A.)

(2) Without prejudice to the generality of the powers conferred by sub-section (1) an order made thereunder may provide,—

- (a) for regulating by license, permits or otherwise the production of molasses;
- (b) for controlling the prices at which molasses may be purchased or sold;
- (c) for regulating by license, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of molasses;
- (d) for requiring any person holding stocks of molasses to sell them at fair prices to specified persons or classes of persons or in specified circumstances;
- (e) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters;
- (f) for requiring persons engaged in the production, supply or distribution of, or trade in, molasses, to maintain and produce for inspection any books, accounts and records relating to their business and to furnish any information relating thereto;
- (g) for any incidental and supplementary matters, including in particular the entering and search of premises, vehicles, vessels and aircrafts, the seizure by a person authorised by the '[State] Government in writing to make such search of any molasses in respect of which such person has reason to believe that a contravention of the order has been, is being or is about to be committed, the grant or issue of licenses, permits or other documents, and the charging of fees therefor.

(3) Nothing in sub-sections (1) and (2) shall authorise the making of any order which prohibits or restricts, or enables any action to be taken for prohibiting or restricting, the entry into, or export from, West Bengal of any molasses.

Delegation
of powers.

3A. The State Government may by notified order direct that the power to make orders under section 3, shall, in relation to such matters and subject to such conditions, if any, as may be specified in the order, be exercisable also by the Excise Commissioner as defined in clause (8) of section 2 of the Bengal Excise Act, 1909, or by a Collector as defined in clause (5) of the said section of the said Act.

Ben. Act
of 1909.

¹See foot-note 3 on page 545, ante.

²This section was inserted by section 3 of the West Bengal Molasses Control (Amendment) Act, 1952 (West Ben. Act XIII of 1952).

XIV of 1949.]

(Sections 4—9.)

Ben. Ord.
III of 1946.

Ben. Act I
of 1947.

West Ben.
Act V of
1948.

4. Any order made or deemed to have been made under any provision of the Bengal Molasses Control Ordinance, 1946, as enacted and continued in operation by or under the Bengal Ordinances Temporary Enactment Act, 1947, and as further enacted and continued in operation by or under the West Bengal Expiring Laws Act, 1948, and in force immediately before the commencement of this Act, shall continue in force and be deemed to have been made under the corresponding provision of this Act, and all licenses or permits granted, orders, directions or notifications issued and prices fixed under any such order, and in force immediately before such commencement, shall likewise continue in force and be deemed to have been granted, issued or fixed in pursuance of the provisions of this Act and all penalties incurred and all proceedings commenced under the said Ordinance as so enacted and continued in operation shall be deemed to have been incurred or commenced under this Act.

Saving.

5. Any order made or deemed to have been made under section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

Effect of
orders in-
consistent
with other
enact-
ments.

6. If any person contravenes any order made or deemed to have been made under section 3, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both, and if the order so provides, any Court trying such contravention may direct that any property in respect of which the Court is satisfied that the order has been contravened shall be forfeited to '[Government].

Penalties.

7. Any person who attempts to contravene, or abets a contravention of, any order made or deemed to have been made under section 3 shall be deemed to have contravened that order.

Attempts,
etc., to
contra-
vene
orders.

8. If the person contravening an order made or deemed to have been made under section 3 is a company or other body corporate, every director, manager, secretary or other officer or agent thereof shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

Offences
by
corpora-
tions.

9. No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Indian Penal Code.

Cognizance
of
offences.

Act XLV
of 1960.

¹The word within square brackets was substituted for the words "His Majesty" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

[West Ben. Act XIV of 1949.]

(Section 10.)

Protection
of action
taken
under the
Act.

10. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made or deemed to have been made under section 3.

(2) No suit or other legal proceeding shall lie against the ¹[Government] for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made or deemed to have been made under section 3.

¹The word within square brackets was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

West Bengal Act XVI of 1949¹

THE MAHAJATI SADAN ACT, 1949.

ADAPTED

.. { The Indian Independence (Adaptation
of Bengal and Punjab Acts) Order, 1948.
The Adaptation of Laws Order, 1950.

[14th April, 1949.]

An Act to provide for the speedy acquisition of the land and the unfinished buildings thereon, commonly known as the Mahajati Sadan, for the continuance and completion of the erection of the Mahajati Sadan, for the maintenance, management and use thereof and for the creation of a body of trustees.

WHEREAS certain sums of money were subscribed by the people of India with the object of erecting a building to be used and utilised mainly for purposes described in the Second Schedule and were collected by a Committee called the Subhas Congress Fund Committee constituted at a meeting of the people of Calcutta for the purpose of collecting such subscriptions;

AND WHEREAS in furtherance of the said object Netaji Subhas Chandra Bose took a lease of the land described in item (a) of the First Schedule from the Corporation of Calcutta and initiated the erection thereon of the buildings hereinafter referred to as the Mahajati Sadan of which the foundation stone was laid by Kaviguru Rabindra Nath Tagore;

AND WHEREAS the erection of the Mahajati Sadan could not be completed for being so used and utilised by Netaji Subhas Chandra Bose;

AND WHEREAS it is expedient to provide for the speedy acquisition of the properties described in the First Schedule, for the continuance and completion of the erection of the Mahajati Sadan, for the maintenance, management and use thereof and for the creation of a body of trustees;

It is hereby enacted as follows:—

1. (1) This Act may be called the Mahajati Sadan Act, 1949.

Short title
and
commence-
ment.

²(2) It shall come into force on such date as the ³[State] Government may, by notification in the *Official Gazette*, appoint.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, *Extraordinary*, dated the 12th January, 1949, Pt. IV, p. 57; for Proceedings of the West Bengal Legislative Assembly, see the Proceedings of the meeting of the West Bengal Legislative Assembly, held on the 24th January, 1949.

²The Act came into force on the 1st May, 1949, *vide* Government of West Bengal, Judicial Department, notification No. 2186J., dated the 23rd April, 1949, published in the *Calcutta Gazette*, 1949, Part I, page 681.

³The word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Sections 2—4.)

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “the Board” means the Board of Trustees for the Mahajati Sadan constituted under this Act,

(b) “Collector” means the First Land Acquisition Collector, Calcutta,

(c) “person interested” has the same meaning as in the Land Acquisition Act, 1894,

I of 1894.

(d) the expression “purposes of the Mahajati Sadan” means purposes relating to the erection, equipment, maintenance, repairs, additions, alterations, management, control, use or application of the Mahajati Sadan or of any property or Fund held for or in connection with the Mahajati Sadan and includes the purposes referred to in clause (i) of section 8,

(e) “trustee” means a member of the Board.

Incorporation of Trustees.

3. Subject to the provisions of this Act, the entire management and control of the Mahajati Sadan shall, on and from the date on which the notification referred to in section 8 is published in the *Official Gazette*, be vested in a Board to be called “the Trustees for the Mahajati Sadan” and the Board shall be a body corporate having perpetual succession and a common seal, with power to acquire and hold property both movable and immovable and to enter into contracts and do all acts necessary and consistent with the purposes of this Act and shall by the said name sue and be sued.

Constitution of the Board.

4. (1) The Board shall be constituted by the ¹[State] Government in such manner and consisting of such number of trustees not exceeding eleven, of whom not more than four may be *ex-officio* trustees, as may be prescribed by rules made by the ¹[State] Government.

(2) All acts done by a majority of the trustees present and voting at a meeting of the Board and all acts done in pursuance of a majority decision of the trustees obtained by circulation to the trustees of the matter requiring decision shall be deemed to be acts of the Board.

(3) The Board may appoint a person to act as its Secretary and may also appoint in such manner as may be prescribed by rules made by the ¹[State] Government a Managing Committee and such other Committees as the Board may think fit and delegate to such Committee or Committees such of its powers as it may deemed expedient.

XVI of 1949.]

(Sections 5—7.)

(4) Orders for the payment of money on behalf of the Board shall be deemed to be sufficiently authenticated if signed by two trustees and countersigned by the Secretary of the Board.

Trustees,
Officers
and
servants to
be public
servants.

5. Every trustee and every member of the Managing Committee and every officer and servant of the Board shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Act XLV
of 1860.

Acquisi-
tion.

6. (1) The ¹[State] Government may acquire the properties described in the First Schedule (hereinafter in this section referred to as the said properties) by publishing in the *Official Gazette* a notice to the effect that the ¹[State] Government has decided to acquire the said properties in pursuance of this section.

(2) When the notice as aforesaid is published in the *Official Gazette*, the said properties shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the ¹[State] Government free from all incumbrances, and thereupon the ¹[State] Government may take possession of the said properties in such manner as it may think fit.

(3) When the said properties are acquired in pursuance of this section, there shall be paid to the persons interested such compensation as may be determined and apportioned by the Collector—

(a) in accordance with agreements reached between the persons interested and the ¹[State] Government, or

(b) where no such agreement can be reached, in the manner and in accordance with the principles set out in the Land Acquisition Act, 1894, so, however, that the market value referred to in clause *first* of sub-section (1) of section 23 of the said Act shall be deemed to be the market value of the said properties on the date of publication of the notice referred to in sub-section (1),

I of 1894.

and claimed by such persons within three months from the date of publication of the notice referred to in sub-section (1).

(4) The decision of the Collector under sub-section (3) shall be final and shall not be called in question in any Court.

Erection
of
Mahajati
Sadan.

7. When the properties described in the First Schedule are acquired in pursuance of section 6, the erection of the Mahajati Sadan shall be continued and completed as

¹See foot-note 3 on p. 549, ante.

(Sections 8, 9.)

far as may be in accordance with the original plan approved by Netaji Subhas Chandra Bose and sanctioned by the Corporation of Calcutta with such alterations therein as the ¹[State] Government may think fit, and the Mahajati Sadan shall thereafter be equipped in such manner as the ¹[State] Government may think fit.

Property
to vest in
the Board.

8. Upon the completion of the erection and equipment of the Mahajati Sadan under section 7, the ¹[State] Government may, by notification in the *Official Gazette*, direct the Board to take possession of the properties described in the First Schedule together with the Mahajati Sadan as so erected and equipped and thereupon—

- (i) the Board shall receive and take possession of and hold the same in trust for such purposes as may be prescribed by rules made by the ¹[State] Government consistently with the objects set out in the Second Schedule, and
- (ii) all sums of money in the custody of the aforesaid Subhas Congress Fund Committee and all other property whether movable or immovable which have been or may hereafter be given, bequeathed or otherwise transferred for the purposes of the Mahajati Sadan or acquired by the Board for the said purposes shall vest in the Board to be held in trust for the purposes of the Mahajati Sadan.

Mahajati
Sadan
Fund.

9. (1) There shall be formed for the Mahajati Sadan a fund to be called the Mahajati Sadan Fund to which shall be credited—

- (a) the sums of money paid or granted by the ¹[State] Government and the Corporation of Calcutta either as contributions for the maintenance of the Mahajati Sadan or otherwise for the purposes thereof,
- (b) all other sums of money received by the Board for the purposes of the Mahajati Sadan, and
- (c) all income derived from any property owned or managed by the Board for the purposes of the Mahajati Sadan.

(2) The Mahajati Sadan Fund shall become vested in the Board and shall be under the control and be held in trust for the purposes of the Mahajati Sadan.

(3) All monies creditable to the Mahajati Sadan Fund shall be received by the Secretary to the Board and shall forthwith be paid into the Imperial Bank of India to the credit of an account to be called the Mahajati Sadan Fund Account.

¹See foot-note 3 on p. 549, *ante*.

XVI of 1949.]

(Sections 10—15.)

Contribution by the State Government.

10. The ¹[State] Government shall, for the purposes of the Mahajati Sadan, contribute annually to the Board a sum of twenty-five thousand rupees and may contribute such other sum as the ¹[State] Government may think fit.

Contribution by the Corporation of Calcutta.

11. Notwithstanding anything contained in the Calcutta Municipal Act, 1923², the Corporation of Calcutta shall, for the purposes of the Mahajati Sadan, contribute annually to the Board a sum of five thousand rupees and may contribute such other sums as the Corporation may, from time to time, determine.

Ben. Act III of 1923.

Repairs to the Mahajati Sadan.

12. The ¹[State] Government shall contribute annually a sum not less than five thousand rupees for the purposes of causing such repairs, additions or alterations to be executed to the main and subsidiary buildings of the Mahajati Sadan and to the equipments thereof as, in the opinion of the ¹[State] Government, are necessary.

Maintenance of accounts by the Board.

13. The accounts of the Board shall be kept, audited and published in accordance with such rules as may be made by the ¹[State] Government and shall show the initial expenditure incurred by the ¹[State] Government—

- (a) under section 6 for acquiring the properties described in the First Schedule, and
- (b) under section 7 for completing the erection of the Mahajati Sadan and for equipping the same.

Returns.

14. The ¹[State] Government may call upon the Board to furnish it with any extract from any proceedings of the Board or from any record under the control of the Board or with any information concerning the administration of the Mahajati Sadan and the Board shall thereupon furnish the same without unreasonable delay.

Control and supervision of the Board.

15. (1) If the ¹[State] Government, after such inquiry as it may deem fit, is satisfied—

- (a) that any of the duties imposed or powers conferred upon the Board by or under this Act has not been performed or exercised or has been performed or exercised in an imperfect, inefficient or unsuitable manner, or
- (b) that adequate financial provision has not been made for the performance of any such duty or for the proper maintenance of the Mahajati Sadan, or

¹See foot-note 3 on p. 549, ante.

²The Calcutta Municipal Act, 1923 (Ben. Act III of 1923) was repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951).

(Sections 16, 17.)

(c) that the Board has otherwise exceeded or abused its powers,

the ¹[State] Government may, by notification in the *Official Gazette*, declare the Board to be incompetent or to have exceeded or abused its powers, as the case may be, and direct that the Board shall be superseded for such period not exceeding six months as may be specified in the notification.

(2) When the Board is superseded under the provisions of sub-section (1)—

- (a) all trustees and all members of any Committee appointed by the Board shall, from the date of the publication of the notification under that sub-section, vacate their offices as such trustees and members,
- (b) all powers and duties of the Board shall, during the period of supersession, be exercised and performed by such person or persons as the ¹[State] Government may appoint in this behalf,
- (c) all funds and other property vested in the Board shall, during the period of supersession, vest in ¹[State] Government, and
- (d) before the expiration of the period of supersession the Board shall be reconstituted in accordance with the provisions of section 4.

Validation.

16. No act done or proceedings taken under this Act shall be invalid merely by reason of—

- (a) the existence of any vacancy or any defect in the constitution of the Board or any Committee appointed by the Board,
- (b) any person having ceased to be a trustee or a member of any Committee, or
- (c) any omission, defect or irregularity not affecting the merits of the case.

Power of State Government to make rules.

17. (1) The ¹[State] Government may after previous publication make ²rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the number, and the manner of selection and appointment, of trustees including *ex-officio* trustees, and the periods of time for which such trustees shall hold office,

¹See foot-note 3 on p. 549, *ante*.

²For rules under this Act, see Notification No. 4707J., dated the 24th July, 1956, published in Part I of the *Calcutta Gazette*, dated the 26th July, 1956, page 2837.

[VI of 1949.]

(Section 18.)

- (b) the circumstances in which and the authority by which a trustee appointed under section 4 may be removed,
- (c) the manner in which and the authority by which a vacancy in the office of a trustee appointed under section 4 shall be filled,
- (d) the minimum number of meetings of the Board during any year,
- (e) the manner in which a majority decision of the trustee shall be obtained by circulation to the trustees of the matter requiring decision,
- (f) the appointment of Committees and the delegation thereto of any powers exercisable by the Board under this Act,
- (g) the erection, equipment, maintenance and management of the Mahajati Sadan,
- (h) the purposes for which and the manner in which the Mahajati Sadan or any property or fund held for the purposes of the Mahajati Sadan shall be used and applied,
- (i) the form of accounts to be kept by the trustees, and the audit and publication of such accounts, and
- (j) the appointment, remuneration and conditions of service of officers and servants employed by the Board.

(3) All rules made under this section shall be published in the *Official Gazette* and on such publication shall have effect as if they were enacted in this Act.

18. Subject to such rules as may be made under section 17, the Board may, with the previous sanction of the ¹[State] Government, make regulations to provide for all or any of the following matters, namely:—

Power of the Board to make regulations.

- (a) the appointment of dates, times and places for meetings of the Board and of the Committees, the manner in which such meetings shall be convened, the quorum necessary for transaction of business and the procedure at such meetings,
- (b) defining the powers and duties of the Secretary of the Board.

¹See foot-note 3 on p. 549, ante.

(The First and the Second Schedules.)

THE FIRST SCHEDULE.

(a) Premises No. 166, Chittaranjan Avenue in Calcutta, being all that piece or parcel or plot of rent-free land measuring 1 bigha 19 cottahs 4 chittaks 34 square feet more or less situate on the east side of the Chittaranjan Avenue in the town of Calcutta bounded in the following manner, that is to say, on the *North* by Mitra Lane, on the *South* by Munshi Sadaruddin Lane, on the *East* by a passage between this plot and the plot of land now in the occupation of Burrabazar Yubak Sabha and their Gymnasium and on the *West* by Chittaranjan Avenue,

(b) together with all buildings, structures and erections standing or being on the said land, which said premises and buildings are commonly known as the Mahajati Sadan, and

(c) together with all rights, easements and appurtenances whatsoever belonging or attached or appurtenant to the said land, buildings, structures and erections or held or enjoyed therewith.

THE SECOND SCHEDULE.

The Mahajati Sadan may, *inter alia*, be used for the following purposes, that is to say:—

- (1) A hall to be erected within the building, Mahajati Sadan, may be used for holding public meetings and lectures to educate and enlighten the members of the public, and particularly the citizens of Calcutta, in the present day civic, municipal or other cultural and political problems as also for holding such other lectures and discourses as may be beneficial to the mental and moral outlook of the citizens of Calcutta on reasonable terms and conditions and on payment of a reasonable fee or rent therefor to cover the cost of maintenance and depreciation charges.
- (2) Accommodation may be provided in a part of the said building for a big library containing literature on all subjects of interest to the citizens of Calcutta and in as many languages as possible with books of reference for the free use of the literate citizens of the city of Calcutta.
- (3) Suitable portions of the said building may be—
 - (a) used to accommodate a club or association for the physical culture of such members of the public of Calcutta as may choose to join the

XVI of 1949.]

(The Second Schedule.)

same, with permission to such club or association to use and utilise a portion of the grounds of the Mahajati Sadan remaining open and available for such use;

- (b) allotted to the Working Committee of the Indian National Congress for accommodating such portion of the offices of the All-India Congress Committee as it may deem fit;
- (c) made over to the ¹[Bengal] ¹[Provincial] Congress Committee or the ¹[Provincial] Congress Organisation of ²[West Bengal] for their use subject to a right of re-entry in the event of the said Committee or Organisation—
 - (i) ceasing to have a lawful existence for the time being,
 - (ii) declining to continue or to be in occupation or charge of, or relinquishing possession or charge of, the portion so made over to it, or
 - (iii) failing to observe and perform any of the terms or conditions for such use.

¹The word within square brackets shall stand unmodified, *vide* paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

²The words within square brackets was substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

10

11

West Bengal Act XX of 1949

THE WEST BENGAL NON-AGRICULTURAL TENANCY ACT, 1949.

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTION.

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II.

CLASSES OF NON-AGRICULTURAL TENANTS.

3. Classes of non-agricultural tenants.
4. Purposes for which non-agricultural tenant may hold non-agricultural land.
5. Tenancies held by a non-agricultural tenant.

CHAPTER III.

TENANTS.

6. Manner of use of non-agricultural lands.
7. Incidents of certain tenancies.
8. Renewals of lease of tenancies held for not less than twelve years and succession to, and transfer of, such tenancies.
9. Incidents of non-agricultural tenancies held for less than twelve years.
10. Special incidents in case of misuse of non-agricultural land.
11. Enhancement of rent.
12. Provisions as to enhancement on ground of landlord's improvement.
13. Power to order progressive enhancement.
14. Limitation of right to enhancement.
15. Reduction of rent.

CHAPTER IV.

UNDER-TENANTS.

16. Application of Chapter.
17. Terms on which an under-tenant may be admitted to occupation of non-agricultural land.
18. Rate of rent payable by an under-tenant.
19. Enhancement of rent.
20. Ejectment of an under-tenant.
21. Other incidents of tenancies of under-tenants.
22. Special incidents of tenancies of under-tenants.

CHAPTER V.

PROVISIONS AS TO TRANSFER OF NON-AGRICULTURAL LAND.

23. Manner of transfer of non-agricultural land and notices to landlords.
24. Power of the co-sharer or the immediate landlord of transferor to purchase.
25. Saving as to statements in instruments of transfer where landlord is not a party.
26. Interpretation.

CHAPTER VI.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

27. Power to order survey and preparation of record-of-rights.
28. Applicability of the provisions of Chapter X of the Bengal Tenancy Act, 1885.
29. Order for estimate of fair and equitable rents of non-agricultural lands and preparation of a settlement rent-roll.

SECTION.

30. Procedure where both non-agricultural and other lands are concerned.
31. Publication of settlement rent-roll, hearing of objections and confirmation.
32. Final revision of settlement rent-roll and its confirmation by prescribed Revenue authority.
33. Appeals.
34. Suits.
35. Notification of order under section 27 or section 29 to be conclusive evidence.
36. Presumption of rents settled under sections 30 to 33.
37. Correction of settlement rent-roll.
38. Settlement of rents in respect of non-agricultural lands by Revenue-officers in the case where a settlement of land revenue is not being or is not about to be made.
39. Stay of proceedings in Civil Court during preparation of record-of-rights under section 27.
40. Date from which settled rents take effect.
41. Period for which rents as settled are to remain unaltered.
42. Interpretation.

CHAPTER VII.

GENERAL PROVISIONS AS TO RENT OF NON-AGRICULTURAL TENANCIES.

Payment of rent.

43. Rent to be paid yearly.
44. Time and place for payment of rent.
45. Appropriation of payments.

Receipts and accounts.

46. Non-agricultural tenant making payment to his landlord entitled to a receipt.
47. Non-agricultural tenant entitled to full discharge or statement of account at close of year.
48. Penalties and fine for withholding receipts and statements of account and failing to keep counterparts.
49. State Government to prepare forms of receipt and account.
50. Effect of receipt by registered proprietor, manager or mortgagee.

Deposit of rent.

51. Application to deposit rent in Court.
52. Receipt granted by Court for rent deposited to be a valid acquittance.
53. Procedure for payment to the landlord of rent deposited.
54. Payment or refund of deposit.

Penalty for refusing to receive rent.

55. Penalty for refusing to receive rent tendered by postal money-order or deposited.

Arrears of rent.

56. Liability to sale for arrears.
57. Interest on arrears.
58. Power to award damages on rent withheld without reasonable cause, or to defendant improperly sued for rent.

Liability for rent on change of landlord or after transfer of tenancy.

59. Non-agricultural tenant not liable to transferee of landlord's interest for rent paid to former landlord without notice of the transfer.
60. Liability for rent before transfer of tenancies.

Illegal impositions.

61. *Abwab*, etc., illegal.
62. Fine for realisation of *abwab*, etc.
63. Penalty for exaction by landlord from non-agricultural tenant of sum in excess of the rent payable.

CHAPTER VIII.

IMPROVEMENTS.

SECTION.

- 64. Definition of "improvement".
- 65. Rights to make improvements.
- 66. Collector to decide question as to right to make improvement, etc.
- 67. Registration of landlord's improvements.
- 68. Application to record evidence as to improvement.

CHAPTER IX.

OTHER INCIDENTS OF NON-AGRICULTURAL TENANCIES.

- 69. Eviction of non-agricultural tenants holding tenancies conditional upon employment in industrial concerns.
- 70. No ejectment except in execution of decree.
- 71. Application of the Transfer of Property Act, 1882, or other law.

CHAPTER X.

CONVERSION OF AGRICULTURAL LANDS INTO NON-AGRICULTURAL TENANCIES.

- 72. Conversion of agricultural lands into non-agricultural tenancies in certain

CHAPTER XI.

JUDICIAL PROCEDURE.

- 73. Regard to be had by Civil Courts to entries in record-of-rights.
- 74. Execution of decrees for arrears of rent by assignees of such decrees.
- 75. Relief against forfeitures in certain cases.
- 76. Protection of the interest of an under-tenant having the rights and liabilities of a tenant in case of sale for arrears of rent.
- 77. Delivery of possession of land sold for arrears of rent which has any structure erected on it by a non-agricultural tenant.
- 78. Purchase of non-agricultural tenancy in execution of a decree for arrears of rent to take effect from the date of confirmation of the sale.
- 79. Rules for disposal of sale proceeds.
- 80. Release from attachment of non-agricultural tenancies on payment into Court of the amount of decree or on confession of satisfaction by the decree-holder.
- 81. Amount paid into Court to prevent sale to be a mortgage-debt on the tenancy in certain cases.
- 82. Inferior tenant paying into Court may deduct from rent.
- 83. Decree-holder may bid at sale, judgment-debtor may not.
- 84. Meaning of "arrears" and "arrears of rent".

CHAPTER XII

MISCELLANEOUS.

- 85. Bar to application of Act to certain lands and to certain leases.
- 86. Certain contracts not to affect the provisions of the Act.
- 87. Jurisdiction in proceedings under this Act.
- 88. Application.
- 89. Saving of limitation.
- 90. Computation of the period for which non-agricultural land has been held in certain cases.
- 91. Repeal of Bengal Act XIX of 1936 and Bengal Act IX of 1940.
- 92. Rules.

West Bengal Act XX of 1949

THE WEST BENGAL NON-AGRICULTURAL TENANCY ACT, 1949¹.

AMENDED West Ben. Act XXIV of 1953.
ADAPTED The Adaptation of Laws Order, 1950.

[5th May, 1949.]

An Act to make better provision relating to the law of landlord and tenant in respect of certain non-agricultural tenancies in West Bengal.

WHEREAS it is expedient to make better provision relating to the law of landlord and tenant in respect of certain non-agricultural tenancies in West Bengal;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the West Bengal Non-Agricultural Tenancy Act, 1949.

Short title, extent and commencement.

(2) It extends to the whole of West Bengal, except—

(a) Calcutta as defined in clause (II) of section 3 of the Calcutta Municipal Act, 1923²,

(b) such suburbs of Calcutta as may have been or may hereafter be notified under section 1 of the Calcutta Suburban Police Act, 1866, and are not included within Calcutta as so defined, and

(c) the Howrah Municipality as constituted under the Bengal Municipal Act, 1932.

(3) It shall come into force on such date³ as the ⁴[State] Government may, by notification in the *Official Gazette*, appoint.

Ben. Act
III of
1923.

Ben. Act
II of
1866.

Ben. Act
XV of
1932.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(1) "Bengali year" means a year ending on the last day of the Bengali month of *Chaitra*;

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, of 1948, Part IV, p. 342; and for the Proceedings of the West Bengal Legislative Assembly, see the Proceedings of the meetings of the West Bengal Legislative Assembly held on the 18th and the 19th January, 1949.

²The Calcutta Municipal Act 1923 has been repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951).

³This Act came into force on the 15th ^{May} April, 1949, vide Notification No. 3688L. Ref., dated the 6th May, 1949, published in the *Calcutta Gazette*, dated the 12th May, 1949, Part I, page 800.

⁴This word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

[West Ben. Act

(Chapter 1.—Preliminary.—Section 2.)

- (2) "Collector" includes any officer appointed by the ¹[State] Government to perform all or any of the functions of a Collector under this Act;
- (3) "landlord" means a person immediately under whom a non-agricultural tenant holds and includes the Government;
- (4) "non-agricultural land" means land which is used for purposes not connected with agriculture or horticulture, and includes any land which is held on lease for purposes not connected with agriculture or horticulture irrespective of whether it is used for any such purposes or not, but does not include—
 - (a) a homestead to which the provisions of section 182 of the Bengal Tenancy Act, 1885, apply,
 - (b) land which was originally leased for agricultural or horticultural purposes but is being used for purposes not connected with agriculture or horticulture without the consent either express or implied of the landlord, if the period for which such land has been so used is less than twelve years, ^{2*}
 - (c) land in the districts of Darjeeling or Jalpaiguri which is held for purposes connected with the cultivation or manufacture of tea, ³[and]
 - ⁴(d) land vested in, or in the possession of, the State Government in respect of which any license has been granted by the State Government:

VIII of
1885.

Provided that where an order has been made under section 72 converting a parcel of land which is not non-agricultural land into a tenancy to which the provisions of this Act apply such land shall be deemed to be non-agricultural land;

- (5) "non-agricultural tenant" means a person who holds non-agricultural land under another person and is, or but for a special contract would be, liable to pay rent to such person for that land but does not include ⁵[a person who holds any premises or part of any premises, situated on non-agricultural land and erected or owned by another person, and who is, or but for a special contract

¹The word within square brackets was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²The word "and" was omitted by s. 2(a)(i) of the West Bengal Non-Agricultural Tenancy (Amendment) Act, 1953 (West Ben. Act XXIV of 1953).

³The word "and" within square brackets was added by s. 2 (a)(ii), *ibid*.

⁴The sub-clause (d) was added by s. 2(a)(iii), *ibid*.

⁵The words within square brackets were substituted for the words "any person who holds any such land on which any premises occupied by such person are situated if such premises have been erected, or are owned, by the person to whom such occupier is, or but for a special contract would be, liable to pay rent for such occupation." by s. 2(b), *ibid*.

(Chapter II.—Classes of Non-Agricultural Tenants.—Sections 3—5.)

would be, liable to pay rent for such premises or such part of the premises to such person.]

Explanation.—In this clause “premises” means any building, such as a house, manufactory, warehouse, stable, shop or hut whether constructed of masonry, bricks, concrete, wood, mud, metal or any other material whatsoever and includes any land appertaining to such building;

(6) “prescribed” means prescribed by rules made under this Act;

(7) “*pucca* structure” means any structure constructed mainly of brick, stone or concrete or any combination of these materials;

(8) all words and expressions used but not defined in this Act and used in the Bengal Tenancy Act, 1885, or the Transfer of Property Act, 1882, have the same meanings as in those Acts.

VIII of
1885.
IV of
1882.

CHAPTER II.

CLASSES OF NON-AGRICULTURAL TENANTS.

3. (1) There shall be, for the purposes of this Act, the following classes of non-agricultural tenants, namely:—

Classes of
non-agri-
cultural
tenants.

(a) tenants, and

(b) under-tenants.

(2) “Tenant” means a person who has acquired from a proprietor or a tenure-holder a right to hold non-agricultural land for any of the purposes provided in this Act, and includes also the successors in interest of persons who have acquired such a right.

(3) “Under-tenant” means a person who has acquired a right to hold non-agricultural land for any of the purposes provided in this Act either immediately or mediately under a tenant and includes also the successors in interest of persons who have acquired such a right.

4. A non-agricultural tenant may hold non-agricultural land for—

(a) homestead or residential purposes;

(b) manufacturing or business purposes; or

(c) other purposes.

Purposes
for which
non-agri-
cultural
tenant
may hold
non-agri-
cultural
land.

5. A non-agricultural tenant shall be deemed to hold any non-agricultural land—

(a) for homestead or residential purposes if such tenant is entitled, under the terms of any agreement between himself and the landlord, to use or is actually using such land for homestead or residential purposes;

Tenancies
held by a
non-agri-
cultural
tenant.

(Chapter III.—Tenants.—Section 6.)

- (b) for manufacturing or business purposes if such tenant is entitled, under the terms of any agreement between himself and the landlord, to use or is actually using such land for carrying on there-in any commercial or industrial enterprise or any trade or business; and
- (c) for other purposes if such tenant is entitled, under the terms of any agreement between himself and the landlord, to use or is actually using such land for any purpose not connected with agriculture or horticulture other than—
 - (i) the purposes specified in clauses (a) and (b), and
 - (ii) the exercise of any forest-rights or rights over fisheries or rights to minerals in such land.

CHAPTER III.

TENANTS.

Manner of
use of
non-agri-
cultural
lands.

6. (1) A tenant holding non-agricultural land may use such land in any manner which is not inconsistent with the purposes of the tenancy and which does not materially impair the value of such land.

(2) A tenant holding non-agricultural land comprised in any tenancy to which the provisions of section 7 or section 8 apply shall be entitled—

- (a) to erect any structure including any *pucca* structure;
- (b) to dig any tank; and
- (c) to plant, enjoy the flowers, fruits and other products of, and fell and utilize or dispose of the timber of, any tree

on such land:

Provided that he shall not be entitled to convert any such land into a place of religious worship without the previous consent of the landlord.

(3) A tenant holding non-agricultural land comprised in any tenancy to which the provisions of section 9 apply shall be entitled—

- (a) to erect any structure other than a *pucca* structure;
- (b) to plant, and enjoy the flowers, fruits and other products of, any tree, and
- (c) to fell, and utilize or dispose of the timber of, any tree planted by him

on such land:

Provided that he shall not be entitled to convert any such land into a place of religious worship without the previous consent of the landlord.

XX of 1949.]

(Chapter III.—Tenants.—Section 7.)

7. Notwithstanding anything contained in any other law for the time being in force or in any contract—

Incidents
of certain
tenancies.

IV of 1882.

- (1) if any non-agricultural land has been held with or without any lease having been entered into by the landlord and the tenant from before the commencement of the Transfer of Property Act, 1882, or if the origin of any tenancy is unknown, or
- (2) if the non-agricultural land comprised in any tenancy which has been or is created after the commencement of the Transfer of Property Act, 1882, has been held for a term of not less than twelve years without any lease in writing, or
- (3) if any non-agricultural land has been held for a term of not less than twelve years under a lease in writing but no term is specified in such lease, or
- (4) if any non-agricultural land held under a lease in writing for a period specified therein continues to be held with the express or implied consent of the landlord after the expiration of the time limited by such lease and the total period for which such land is so held is not less than twelve years, or
- (5) if the landlord has allowed *pucca* structures to be erected on any non-agricultural land held under a lease in writing for a period specified therein, whether such structures have been erected,—
 - (a) before the expiration of the said period, or
 - (b) where such non-agricultural land continues to be held with the express or implied consent of the landlord after the expiration of the said period, during the period such non-agricultural land so continues to be held,

then—

- (i) the tenant holding the non-agricultural land comprised in such tenancy shall not be ejected by his landlord from such land except on the ground that he has used such land in a manner which renders it unfit for use for the purposes of the tenancy,
- (ii) the interest of the tenant in the non-agricultural land comprised in such tenancy shall, in the case where such tenant dies intestate in respect

(Chapter III.—Tenants.—Section 8.)

of such interest, be transmitted by inheritance in the same manner as his other immovable property :

Provided that in any case in which under the law of inheritance to which such tenant is subject, his other property goes to the ¹[Government], his interest in such land shall be extinguished, and

(iii) the non-agricultural land comprised in such tenancy or a share or a portion thereof together with the interest of the tenant therein shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner, and to the same extent as his other immovable property.

Renewals of lease of tenancies held for not less than twelve years and succession to, and transfer of, such tenancies.

8. (1) Notwithstanding anything contained in any other law for the time being in force or in any contract, where any non-agricultural land is held under a lease in writing for a term of not less than twelve years specified in such lease, the tenant holding such land shall, on the expiration of the period so specified, be entitled to the option of successive renewals of such lease on such fair and reasonable conditions as to rent as may be agreed upon between the landlord and such tenant :

Provided that no premium or *salami* shall be payable in respect of such renewal.

(2) If there is any dispute as to whether any condition for the renewal of a lease under sub-section (1) is fair and reasonable, the landlord or the tenant may apply in the prescribed manner to the Court, and the Court shall thereupon determine the conditions for renewal of the lease which it considers fair and reasonable in the circumstances of the case.

(3) A tenant holding non-agricultural land comprised in a tenancy to which the provisions of sub-section (1) apply shall not be ejected by his landlord from such land during the term specified in the lease, nor after the tenant has on any occasion exercised his option of renewal, during the term of such renewal except on the ground that he has used such land in a manner which renders it unfit for use for the purposes of the tenancy.

(4) The interest of the tenant in any non-agricultural land held under a lease to which the provisions of sub-section (1) apply shall, during the term specified in the lease,

¹The word within square brackets was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

XX of 1949.]

(Chapter III.—Tenants.—Section 9.)

or where the tenant has exercised his option of renewal, during the term of such renewal—

- (i) in the case where such tenant dies intestate in respect of such interest, be transmitted by inheritance in the same manner as his other immovable property:

Provided that in any case in which, under the law of inheritance to which such tenant is subject, his other property goes to the ¹[Government], his interest in such land shall be extinguished; and

- (ii) subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as his other immovable property.

9. (1) Notwithstanding anything contained in any other law for the time being in force or in any contract, if any non-agricultural land has been held for a term of more than one year but less than twelve years—

Incidents of non-agricultural tenancies held for less than twelve years.

- (a) under a lease in writing for a term of more than one year but less than twelve years to which the provisions of clause (5) of section 7 do not apply, or
- (b) without a lease in writing, or
- (c) under a lease in writing but no term is specified in such lease,

then the tenant holding such non-agricultural land shall be liable to ejectment on one or more of the following grounds and not otherwise, namely:—

- (i) on the ground that he has used such land in a manner which renders it unfit for use for the purposes of the tenancy;
- (ii) on the ground that the term of the lease has expired in the case of tenancies of the class specified in clause (a);
- (iii) on the ground that the tenancy has been terminated by the landlord by six months' notice in writing expiring with the end of a year of the tenancy served on the tenant in the prescribed manner in the case of tenancies of the class specified in clause (b):

Provided that a tenant shall not be liable to ejectment on the ground specified in clause (iii) except on payment of such reasonable compensation as may be agreed upon between the landlord and the tenant or if they do not agree, as may be determined by the Court on the application of the landlord or such tenant.

¹See footnote 1 on p. 568, *ante*.

(Chapter III.—Tenants.—Sections 10, 11.)

(2) The interest of the tenant in any non-agricultural land to which the provisions of sub-section (1) apply shall,—

(i) in the case where such tenant dies intestate in respect of such interest, be transmitted by inheritance in the same manner as his other immovable property :

Provided that in any case in which under the law of inheritance to which such tenant is subject his other property goes to the ¹[Government], his interest in such land shall be extinguished; and

(ii) subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent, as his other immovable property.

Special incidents in case of misuse of non-agricultural land.

10. Notwithstanding anything elsewhere contained in this Act or in any other law for the time being in force or in any contract where any non-agricultural land held by a non-agricultural tenant or any share or portion thereof is used—

(a) for any immoral, illegal or unsocial purpose, or

(b) in any manner so as to become a source of grave danger to the public peace or public safety,

a co-sharer tenant or the landlord of the non-agricultural tenant may, if such land or share or portion is contiguous to any land in the actual possession of such co-sharer tenant or landlord, as the case may be, apply to the Court for such land or share or portion to be transferred to himself on payment of such consideration as may be determined by the Court :

Provided that if two or more persons apply under this section for such transfer, the Court shall determine the priority of the rights of the respective applicants to purchase under this section.

Enhancement of rent.

11. (1) The rent payable by a tenant in respect of any non-agricultural land shall, except in the case where such land is held on a fixed rent or free of rent either under a contract or under a decree or order passed by a competent Court or authority, be liable to enhancement as provided by this Act, and not otherwise.

(2) The rent payable by a tenant may be enhanced up to such limit as the Court thinks fair and equitable in the circumstances of the case :

Provided that the rent shall not be enhanced so as to exceed the rent previously payable by the tenant by more than twelve and a half *per centum*.

¹See footnote 1 on p. 568, ante.

XX of 1949.]

(Chapter III.—Tenants.—Sections 12, 13.)

(3) In determining a fair and equitable rent under sub-section (2), the Court shall, subject to such further provisions as may be prescribed in this behalf, take into consideration—

- (a) the existing rent and the period during which it has remained without enhancement;
- (b) as far as can expediently be ascertained, the rent paid to other landlords for non-agricultural lands in the vicinity with similar advantages or of a similar description;
- (c) the market value of the non-agricultural land and the rent which would be payable if the rate were fixed at not more than four *per centum* of such market-value;
- (d) the special conditions and incidents, if any, of the tenancy; and
- (e) any cost incurred in making any improvement to or on the non-agricultural land or in converting such land for the purpose for which it is being used according to the conditions of the tenancy.

12. (1) When an enhancement is claimed on the ground of a landlord's improvement,—

- (a) the Court shall not grant an enhancement unless the improvement has been registered in accordance with the provisions of this Act; and
- (b) in determining the amount of enhancement the Court shall have regard to,—
 - (i) the increase in the value of the non-agricultural land caused or likely to be caused by the improvement,
 - (ii) the cost of the improvement,
 - (iii) the expenditure (if any), required for utilising the improvement, and
 - (iv) the existing rent and the ability of the non-agricultural land to bear a higher rent.

Provisions as to enhancement on ground of landlord's improvement.

(2) A decree under this section shall, on the application of the tenant, be subject to reconsideration in the event of the improvement not producing or ceasing to produce the estimated effect.

13. If it thinks that an immediate increase of rent will cause hardship, the Court may direct that the enhancement shall take effect gradually at such intervals and by such increments extending over a period not exceeding five years as the Court may fix in this behalf.

Power to order progressive enhancement.

[West Ben. Act

(Chapter III.—Tenants.—Chapter IV.—Under-tenants.—Sections 14—18.)

Limitation
of right to
enhance-
ment.

14. (1) When a tenant is admitted to the occupation of any non-agricultural land, the rent payable by such tenant in respect of such land shall not, except on the ground of the landlord's improvement, be enhanced during the fifteen years next following the date on which the tenant has been so admitted to the occupation of such land.

(2) When the rent of a tenant has been enhanced by the Court or in pursuance of the conditions of a contract, it shall not be further enhanced during the fifteen years next following the date on which it has been last so enhanced and for the purposes of this section if an order of gradual enhancement of such rent has been made by a Court in accordance with the provisions of section 13, the full rent fixed by such order shall be deemed to have come into effect from the date of such order:

Provided that the landlord of such tenant may institute a suit for the enhancement of the rent of such tenancy during the said period of fifteen years on the ground of any improvement effected to the non-agricultural land comprised in such tenancy by, or wholly or partly at the expense of, such landlord during such period.

Reduction
of rent.

15. The rent of a tenant may be reduced by the Court if the Court considers that the rate of rent payable by such tenant is unfair and inequitable, and in determining what rent is fair and equitable under this section the Court shall have regard to the provisions of sub-section (3) of section 11.

CHAPTER IV.

UNDER-TENANTS.

Applica-
tion of
Chapter.

16. The provisions of this Chapter shall apply to all under-tenants whether their tenancies were created before or after the commencement of this Act.

Terms on
which an
under-ten-
ant may
be admit-
ted to
occupation
of non-
agricul-
tural land.

17. An under-tenant may be admitted to the occupation of any non-agricultural land on such terms and conditions consistent with the provisions of this Act as may be agreed upon between himself and his landlord.

Rate of
rent pay-
able by an
under-
tenant.

18. An under-tenant shall be liable to pay such rate of rent for the non-agricultural land comprised in his tenancy as has been agreed upon between himself and his landlord at the time of his admission to the occupation of such land:

Provided that the rate of rent payable in respect of the non-agricultural land comprised in any tenancy by an under-tenant who has been admitted to occupation of such

XX of 1949.]

(Chapter IV.—Under-tenants.—Sections 19, 20.)

land after the commencement of this Act shall not, except in the case where such land is held on a fixed rent or free of rent by the tenant under whom such under-tenant holds, exceed one and a half times the rate of rent payable by such tenant in respect of such land.

19. (1) Notwithstanding anything contained in any other law for the time being in force or in any contract, the rent of an under-tenant shall be liable to enhancement up to a limit not exceeding one and a half times the rent for the time being payable in respect of the non-agricultural land comprised in the tenancy of such under-tenant by the tenant under whom such under-tenant holds in the case where such tenant does not hold such land at a fixed rent or free of rent, and up to such limit as the Court may, subject to such provisions as may be prescribed in this behalf, think fair and equitable in other cases.

Enhancement of rent.

(2) For the purposes of sub-section (1) the rent for the time being payable in respect of the non-agricultural land comprised in the tenancy of an under-tenant by the tenant under whom such under-tenant holds shall, in the case where such under-tenant has been admitted to the occupation of only a portion of the land comprised in the tenancy of such tenant, be determined in such manner as may be prescribed.

20. Notwithstanding anything contained in any other law for the time being in force or in any contract, an under-tenant shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise, namely:—

Ejectment of an under-tenant.

- (a) on the ground that he has used the non-agricultural land comprised in his tenancy in a manner which renders it unfit for use for the purposes of the tenancy;
- (b) on the ground that the term of his lease has expired when he holds the non-agricultural land under a written lease:

Provided that in the case where any non-agricultural land is held by an under-tenant without a lease in writing or under a lease in writing but no term is specified in such lease, it shall be also lawful for his landlord to eject him from such land after having given him six months' notice in writing expiring with the end of a year of the tenancy, and on payment of such reasonable compensation as may be agreed upon between the landlord and the under-tenant, or in the case where they do not agree, as may be determined by the Court on the application of the landlord or such under-tenant.

[West Ben. Act

(Chapter IV.—Under-tenants.—Chapter V.—Provisions as to transfer of non-agricultural land.—Sections 21—23.)

Other incidents of tenancies of under-tenants.

21. The interest of an under-tenant in any non-agricultural land shall,—

- (a) in the case where such under-tenant dies intestate in respect of such interest, be transmitted by inheritance in the same manner as his other immovable property:

Provided that in any case in which under the law of inheritance to which such under-tenant is subject his other property goes to the ¹[Government], his interest in such land shall be extinguished; and

- (b) subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as his other immovable property.

Special incidents of tenancies of under-tenants.

22. Notwithstanding anything contained in any other law for the time being in force or in any contract, in the case of the tenancy of an under-tenant—

- (a) the provisions of section 10 shall apply; and
(b) where—

- (i) the conditions referred to in clause (1), (2), (3), (4) or (5) of section 7 are fulfilled, or

- (ii) the tenancy is held under a lease in writing for a term of not less than twelve years specified in such lease,

the under-tenant shall have all the rights and liabilities of a tenant as set forth in section 7 or section 8, as the case may be, and the provisions of sections 6, and 11 to 15 shall, and the provisions of sections 18, 19 and 20, in so far as they are inconsistent with the provisions of this section shall not, apply.

CHAPTER IV.

PROVISIONS AS TO TRANSFER OF NON-AGRICULTURAL LAND.

Manner of transfer of non-agricultural land and notices to landlords.

23. (1) Every transfer of non-agricultural land held by a non-agricultural tenant or of any portion or share thereof shall, except in the case of a bequest or a sale in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913, be made by registered instrument, and a Registering Officer shall not accept for registration any such instrument unless the sale

Ben. Act
III of
1913.

¹See footnote 1 on p. 568, ante.

XX of 1949.]

(Chapter V.—Provisions as to transfer of non-agricultural land.—Section 24.)

price or, where there is no sale price, the value of the land or portion or share thereof transferred is stated therein, and unless it is accompanied by—

- (a) a notice giving the particulars of the transfer in the prescribed form, together with the process fee prescribed for the service thereof on the landlord who is not a party to the transfer, and
- (b) such notices and process fees as may be required by sub-section (4).

(2) In the case of a bequest of such land or portion or share thereof, no Court shall grant probate or letters of administration until the applicant files a notice similar to, and deposits a process fee of the same amount as, that referred to in clause (a) of sub-section (1).

(3) A Court or Revenue Officer shall not confirm the sale of such land or portion or share thereof put to sale in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913, and no Court shall make a decree or order absolute for foreclosure of a mortgage of such land or portion or share thereof until the purchaser or the mortgagee, as the case may be, files a notice similar to and deposits a process fee of the same amount as, that referred to in sub-section (1).

Ben. Act
III of 1913.

(4) If the transfer of a portion or share of such land be one to which the provisions of section 24 apply there shall be filed notices giving particulars of the transfer in the prescribed form together with process fees prescribed for the service thereof on all co-sharer tenants of such land who are not parties to the transfer.

(5) The Court, Revenue Officer or Registering Officer, as the case may be, shall in the prescribed manner serve the notices for which this section provides and after service of such notice the landlord shall not refuse to recognise the transferee as the tenant in respect of the land or portion or share thereof transferred nor omit to enter the name of the transferee in the rent-roll of the landlord in place of that of the transferor or, where only a portion or share of the interest of the transferor has been transferred, along with the name of the transferor.

24. (1) If the entire non-agricultural land in a non-agricultural tenancy is transferred, the immediate landlord, or if a portion or share of such land is transferred, the immediate landlord or one or more co-sharer tenants of such land may, within four months of the service of notice issued

Power of the co-sharer or the immediate landlord of transferor, to purchase.

[West Ben. Act

(Chapter V.—Provisions as to transfer of non-agricultural land.—Section 24.)

under section 23, apply to the Court for such land or portion or share thereof to be transferred to himself or themselves, as the case may be:

Provided that—

- (a) if both a co-sharer tenant and the landlord apply under this section and comply with the provisions herein contained the co-sharer tenant shall have the prior right to purchase under this section;
- (b) the immediate landlord of the non-agricultural tenant shall not have any right to purchase under this section unless the non-agricultural land or the share or portion thereof so transferred is contiguous to any land in the actual possession of the landlord and the Court is satisfied that such land or share or portion thereof is required for use by such landlord for any of the purposes specified in section 4; and
- (c) in the case of transfer in execution of a decree or certificate signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of such land, the immediate landlord of the non-agricultural tenant shall not have any right to purchase under this section.

Ben. Act
III of
1913.

(2) The application under sub-section (1) shall be dismissed unless the applicant at the time of making it deposits in Court the amount of the consideration money or the value of the property or the portion or share thereof transferred as stated in the notice served on the applicant under section 23 together with compensation at the rate of five *per centum* of such amount.

(3) If such deposit is made, the Court shall give notice to the transferee to appear within such period as it may fix and to state what other sums he has paid in respect of rent for the period after the date of transfer or in annulling encumbrances on the property. The Court shall then direct the applicant, including any person whose application under sub-section (4) is granted, to deposit within such period as the Court thinks reasonable such amount as the transferee has paid on this account together with interest at the rate of six and quarter *per centum per annum* with effect from the date on which the transferee made such payments.

(4) (a) When an application has been made by one or more co-sharer tenants under sub-section (1) any of the remaining co-sharer tenants including the transferee, if one of them, may within the period of four months referred to in the said sub-section or within one month of the application, whichever is later, apply to join in the said application, and

XX of 1949.]

(Chapter V.—Provisions as to transfer of non-agricultural land.—Section 24.)

any co-sharer tenant who has not applied under sub-section (1) or has not applied to join under this sub-section, shall not have any further right to purchase under this section.

(b) Such application to join as a co-applicant shall be dismissed unless within such period as the Court may fix, the applicant deposits in Court for payment to the applicant under sub-section (1), such sum, as the Court shall determine as the share to be paid by him for the purposes of sub-section (2). If such deposit is made, the Court shall grant the application to join and thereafter such applicant shall be deemed to be an applicant under sub-section (1).

(5) If the deposits required under sub-section (2) or clause (b) of sub-section (4), as the case may be, and under sub-section (3) are made, and, in the case where the application is made by the immediate landlord, the Court is satisfied that the conditions referred to in sub-section (1) have been fulfilled, the Court shall make an order allowing the application and directing that the deposits made under sub-sections (2) and (3) shall be paid to the transferee or to such persons as the Court thinks fit:

Provided that if both the immediate landlord and the co-sharer tenant have applied under this section and the application of the co-sharer tenant is allowed under this sub-section, the application of the immediate landlord shall be dismissed.

(6) Notwithstanding anything contained in any other law for the time being in force, the Court shall, if the applicant under sub-section (1) or any person whose application under sub-section (4) is granted disputes the correctness of the amount of the consideration money as stated in the notice issued under section 23, inquire into such dispute before making an order under sub-section (5) and after giving the transferee an opportunity of being heard determine for the purposes of this section the amount of the consideration money which the transferee has actually paid for the transfer of the property or the portion or share thereof, as the case may be, and the amount so determined shall be deemed to be the consideration money referred to in sub-section (2) and where the amount of the consideration money has been so determined the deposit made under that sub-section shall for the purposes of sub-section (5) be the amount so determined together with the compensation at the rate of five *per centum* of such amount.

(7) In making an order under sub-section (5) in favour of more than one co-sharer tenant, the Court may apportion the property comprised in the portion or share transferred among the applicants in such manner as it deems equitable after taking existing possession into consideration; the

(Chapter V.- *Provisions as to transfer of non-agricultural land.—Section 24.*)

Court shall so apportion the said property or portion thereof on the request of any applicant and, in this case, may require the applicant who makes such request to deposit, within such period as the Court may fix, such further sums as the Court considers necessary for equitable distribution among the remaining applicants:

Provided that no apportionment order under this subsection shall operate as a division of the tenancy.

(8) From the date of the making of the order under subsection (5)—

(i) the right, title and interest in the non-agricultural land or portion or share thereof accruing to the transferee from the transfer shall, subject to any orders passed under sub-section (7), be deemed to have vested free from all encumbrances which have been annulled or created after the date of transfer, in the immediate landlord or in the co-sharer tenant, as the case may be, whose application to purchase has been allowed under this section,

(ii) the liability of the transferee for the rent due from him on account of the transfer shall cease, and

(iii) the Court, on further application of such applicant, may place him in possession of the property vested in him.

(9) An appeal from any order of a Court under this section shall lie to the Civil Appellate Court having jurisdiction to entertain such appeals.

(10) Nothing in this section shall take away the right of pre-emption conferred on any person by Muhammadan Law.

(11) Nothing in this section shall apply to—

(a) a transfer to a co-sharer in the tenancy whose existing interest has accrued otherwise than by purchase, or

(b) a transfer by exchange, sub-lease or partition, or

(c) a transfer by bequest or gift (including *heba* but excluding *heba-bil-ewaz* for any pecuniary consideration) in favour of the husband or wife of the testator or the donor or of any relation by consanguinity within three degrees of the testator or donor, or

(d) a *wakf* in accordance with the provisions of the Muhammadan Law, or

XX of 1949.]

(Chapter V.—Provisions as to transfer of non-agricultural land—Sections 25, 26—Chapter VI.—Record-of-rights and Settlement of rents.—Sections 27, 28.)

- (e) a *debutter* or any other dedication for religious or charitable purposes without any reservation of pecuniary benefit for any individual.

Explanation.—A relation by consanguinity shall, for the purposes of this sub-section, include a son adopted under the Hindu Law.

I of 1872. **25.** Notwithstanding anything contained in the Indian Evidence Act, 1872, nothing contained in any instrument of transfer to which the landlord is not a party shall be evidence against the landlord of the permanence, the amount or fixity of rent, the area, the transferability or any incident of any tenancy, referred to in such instrument.

Saving as to state-ments in instru-ments of transfer where landlord is not a party.

26. (1) In this chapter “transferee”, “purchaser” and “mortgagee” include their successors in interest.

Inter-pretation.

(2) In section 23,—

- (a) “transfer” does not include partition or a sub-lease, or, until a decree or order absolute for foreclosure is made, simple or usufructuary mortgage or mortgage by conditional sale;
- (b) “transferor” includes a person whose interest in any non-agricultural land or portion or share thereof has terminated in the circumstances mentioned in sub-section (2) or sub-section (3) of that section.

CHAPTER VI.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

VIII of 1885.

27. The ¹[State] Government may in any case and in particular, in any of the cases specified in sub-section (2) of section 101 of the Bengal Tenancy Act, 1885, if it thinks fit, make an order directing that a survey be made and a record-of-rights be prepared by a Revenue-officer in respect of all non-agricultural lands in any local area, estate or tenure or part thereof whether or not the said Act extends to such area, estate, tenure or part.

Power to order survey and preparation of record-of-rights.

28. • When an order under section 27 has been made,—

- (a) the particulars to be recorded shall be specified in the order and may include, either without or in addition to other particulars, any of those particulars specified in section 102 of the Bengal Tenancy Act, 1885;

Appli-cability of the provi-sions of Chapter X of the Bengal Tenancy Act, 1885.

(b) subject to any rules made under this Act, all the provisions of Chapter X of the Bengal Tenancy

¹See foot-note 4 on p. 563, *ante*.

(Chapter VI.—Record-of-rights and settlement of rents.—
Sections 29, 30.)

Act, 1885, and the rules made thereunder shall, in so far as they are not inconsistent with the provisions of this Act, apply as if such order is an order made under section 101 of the said Act in respect of lands used for purposes connected with agriculture or horticulture.

Order for estimate of fair and equitable rents of non-agricultural lands and preparation of a settlement rent-roll.

29. When an order has been made under section 27 in respect of any local area, estate or tenure or part thereof of which a settlement of land revenue is being or is about to be made, the [State] Government may make an order directing the Revenue-officer, after recording under section 28 those particulars which are relevant and after publication of the draft of the record-of-rights—

- (a) to estimate fair and equitable rents for non-agricultural tenants of every class in accordance with the provisions of this Act, and
- (b) to estimate the rental value for all or any non-agricultural lands which are held *khas* by a landlord,

in such local area, estate or tenure or part thereof, and then to prepare in the prescribed form and manner a settlement rent-roll in which the rents and rental values so estimated together with such other particulars as may be prescribed shall be specified.

Procedure where both non-agricultural and other lands are concerned.

30. Notwithstanding anything contained in the Bengal Tenancy Act, 1885, when an order has been made under section 29 directing a Revenue-officer to prepare a settlement rent-roll in respect of non-agricultural lands in any local area, estate or tenure or part thereof—

VIII of 1885.

- (a) the rents of such non-agricultural lands shall not be settled under Part II of Chapter X of the said Act; and
- (b) where any of such non-agricultural lands are comprised in a tenancy which includes lands other than non-agricultural lands, the Revenue-officer shall—
 - (i) divide the tenancy so as to constitute separate tenancies for the non-agricultural lands and the other lands;
 - (ii) apportion the existing rent between the tenancies so constituted; and
 - (iii) estimate fair and equitable rents for the non-agricultural lands in accordance with the provisions of this Act.

¹See foot-note 4 on p. 563, *ante*.

XX of 1949.]

*(Chapter VI.—Record-of-rights and settlement of rents.—
Sections 31—33.)*

31. (1) When an order has been made under section 29 for the preparation of a settlement rent-roll, the Revenue-officer shall prepare such rent-roll in accordance with the provisions of this Chapter and shall cause a draft of it to be published in the prescribed manner and for the prescribed period and shall receive and consider any objections made in regard to any entry therein or omission therefrom during the period of publication and shall dispose of such objections according to such rules as the ¹[State] Government may make.

Publica-
tion of
settlement
rent-roll,
hearing of
objections
and con-
firmation.

(2) The Revenue-officer may, of his own motion or on the application of any party aggrieved, at any time before a settlement rent-roll is submitted to the confirming authority under section 32, revise any entry therein:

Provided that no such entry shall be revised until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

32. (1) When all objections have been disposed of under section 31, the Revenue-officer shall submit the settlement rent-roll to the prescribed Revenue authority for confirmation with a full statement of the grounds for his proposals and a summary of the objections (if any) which he has received.

Final revi-
sion of
settlement
rent-roll
and its
confirma-
tion by
prescribed
Revenue
authority.

(2) Such authority may confirm the settlement rent-roll with or without amendment or may return it for revision:

Provided that no entry shall be amended or omission supplied until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

(3) After confirmation by such authority the Revenue-officer shall cause the date of confirmation to be published in the prescribed manner and thereafter the settlement rent-roll shall be open to inspection at such place and times as may be prescribed.

33. (1) Any person who is aggrieved by any entry in or omission from a settlement rent-roll confirmed under section 32 may appeal to the prescribed Revenue authority and from the decision of such authority to the Board of Revenue in the manner and within the period prescribed in this behalf.

Appeals.

(2) No Civil Court shall annul or alter any decision of a Revenue-officer, a Revenue authority or the Board of Revenue under section 30 or section 31 or section 32 or sub-section (1) of this section except as provided in section 34.

¹See footnote 4 on p. 562, ante.

[West Ben. Act

*(Chapter VI.—Record-of-rights and settlement of rents.—
Section 34.)*

Suits.

34. (1) Any person who is aggrieved by any entry in or omission from a settlement rent-roll confirmed under section 32 may institute a suit in the Civil Court which would have jurisdiction to entertain a suit for the possession of the land to which the entry relates or in respect of which the omission was made.

(2) Such suit shall be instituted within six months from the date of confirmation of the settlement rent-roll or from the date of the certificate of final publication of the record-of-rights, whichever is later, or, if an appeal has been presented under section 33, within three months from the date of the disposal of such appeal.

(3) Such suit may be instituted on any of the following grounds and on no other ground, namely:—

- (a) that the land is not liable to the payment of rent;
- (b) that the land although entered in the record-of-rights as being held rent-free is liable to the payment of rent;
- (c) that the relation of landlord and tenant does not exist;
- (d) that in the record-of-rights the land has been wrongly recorded as part of a particular estate or tenancy or wrongly omitted from the lands of any estate or tenancy;
- (e) that in the record-of-rights there has been any omission of an under-tenant or such under-tenant has been wrongly recorded as holding the land rent-free;
- (f) that in the record-of-rights the special conditions and incidents of the tenancy have not been recorded or have been wrongly recorded;
- (g) that in the record-of-rights any right of way or other easement attached to the land has not been recorded or has been wrongly recorded;
- (h) that the land has been wrongly recorded in the settlement rent-roll as non-agricultural land; and
- (i) that there has been an omission to estimate fair and equitable rents in respect of any land under this Act.

(4) When a Civil Court has passed final orders or a decree under this section it shall notify the same to the Collector.

XX of 1949.]

(Chapter VI.—Record-of-rights and settlement of rents.—
Sections 35—39.)

35. A notification in the *Official Gazette* of an order under section 27 or of an order under section 29 shall be conclusive evidence that the order has been duly made.

Notification of order under section 27 or section 29 to be conclusive evidence.

36. Subject to the provisions of section 34, all rents entered in a settlement rent-roll confirmed under section 32 or settled under section 33 shall be deemed to have been correctly settled and to be fair and equitable rents within the meaning of this Act.

Presumption of rents settled under sections 30 to 34.

37. The Revenue-officer may at any time correct any *bona fide* clerical mistake in or omission from the settlement rent-roll and shall make such alterations in the same as may be necessary to give effect to any decision under subsection (1) of section 33 or section 34.

Correction of settlement rent-roll.

38. Where an order has been made under section 27 for the preparation of a record-of-rights in respect of all non-agricultural lands in any local area, estate or tenure or part thereof of which a settlement of land revenue is not being made or is not about to be made, the Revenue-officer shall, in settling the rents of such non-agricultural lands under sections 105 and 105A of the Bengal Tenancy Act, 1885, have regard to the provisions of this Act as to the determination of a fair and equitable rent and to such rules as may be made in this behalf under this Act.

Settlement of rents in respect of non-agricultural lands by Revenue-officers in the case where a settlement of land revenue is not being or is not about to be made.

39. When an order has been made under section 27, directing the preparation of a record-of-rights, then, subject to the provisions of section 34, a Civil Court shall not,—

Stay of proceedings in Civil Court during preparation of record-of-rights under section 27.

(a) where a settlement of land revenue is being or is about to be made—until after the final publication of the record-of-rights, and

(b) where a settlement of land revenue is not being made or is not about to be made—until four months after the final publication of the record-of-rights,

entertain any suit or application for the alteration of the rent or the determination of the status of any non-agricultural tenant in the area to which the record-of-rights applies.

[West Ben. Ac

(Chapter VI.—Record-of-rights and settlement of rents.—Sections 40-42—Chapter VII.—General Provisions as to rent of non-agricultural tenancies.—Section 43.)

Date from which settled rents take effect.

40. When a rent is settled by a Revenue-officer under this Chapter or under Chapter X of the Bengal Tenancy Act, 1885, after an order under section 27 has been made, such rent shall take effect from such date as may be fixed by the Revenue-officer.

VIII of 1885.

Period for which rents as settled are to remain unaltered.

41. (1) When the rent of the non-agricultural land comprised in a tenancy is settled under this Chapter, or under Chapter X of the Bengal Tenancy Act, 1885, after an order under section 27 has been made, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of such land, be enhanced, in the case where such land is held by a tenant or by an under-tenant having under section 22 the rights and liabilities of a tenant, for fifteen years, and in the case where such land is held by an under-tenant having no such rights and liabilities, for five years; and no such rent shall be reduced within the period aforesaid save on the ground of alteration in the area of the non-agricultural land comprised within the tenancy.

(2) The said periods of fifteen years and five years shall be counted from the date on which the rent settled takes effect under this Chapter.

Interpretation.

42. In this Chapter—

- (a) "Revenue-officer" includes any officer whom the ¹[State] Government may appoint to discharge all or any of the functions of a Revenue-officer under that Chapter;
- (b) the term "settlement of land-revenue" includes a settlement of rent in an estate or tenure which belongs to the ²[Government].

CHAPTER VII.

GENERAL PROVISIONS AS TO RENT OF NON-AGRICULTURAL TENANCIES.

Payment of rent.

Rent to be paid yearly.

43. Subject to agreement, a money-rent payable by a non-agricultural tenant shall be paid yearly according to the Bengali year and shall fall due on the last day of the Bengali year in respect of which it is paid.

¹See foot-note 4 on p. 568, ante.

²See foot-note 1 on p. 568, ante.

[XX of 1949.]

(Chapter VII.—General Provisions as to rent of non-agricultural tenancies.—Sections 44—46.)

44. (1) Every non-agricultural tenant shall pay or tender the yearly rent before sunset of the day on which it falls due:

Time and place for payment of rent.

Provided that the non-agricultural tenant may pay or tender the rent payable for the year at any time during the year before it falls due.

(2) The payment or tender of rent may be made—

(i) at the landlord's local office or at such other convenient place as may be appointed in that behalf by the landlord; or

(ii) by postal money-order in the manner prescribed.

A tender may also be made by depositing the rent in Court in accordance with the provisions of section 51.

(3) Where rent is sent by postal money-order in the manner prescribed, the Court may presume until the contrary is proved that a tender has been made.

(4) When a landlord accepts rent sent by postal money-order, the fact of this acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the postal money-order form.

(5) Any yearly rent or part of any yearly rent not duly paid at or before the time when it falls due shall be deemed to be an arrear.

45. (1) When a non-agricultural tenant makes a payment on account of rent, he may declare the year or years in respect of which he wishes the payment to be credited, and the payment shall be credited accordingly.

Appropriation of payments.

(2) If he does not make any such declaration, the payment may be credited to the account of such year or years as the landlord thinks fit.

Receipts and accounts.

46. (1) Every non-agricultural tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith a written receipt for such payment either from such landlord, or, where the agent of such landlord has been authorised in writing by such landlord to issue and sign such receipts on behalf of such landlord, from such agent.

Non-agricultural tenant making payment to his landlord entitled to a receipt.

(2) The landlord or such agent, as the case may be, shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall be in such form and shall specify such particulars as may be prescribed either generally or for any particular local area or class of cases.

(Chapter VII.—General Provisions as to rent of non-agricultural tenancies.—Sections 47, 48.)

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

Non-agri-
cultural
tenant
entitled to
full dis-
charge or
statement
of account
at close of
year.

47. (1) Where a landlord admits that all rent payable by a non-agricultural tenant to the end of the Bengali year has been paid, the non-agricultural tenant shall be entitled to receive free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, either from the landlord, or, where the agent of such landlord has been authorised in writing to issue and sign such receipts on behalf of such landlord, from such agent.

(2) Where the landlord does not so admit, the non-agricultural tenant shall be entitled, on paying a fee of four annas, to receive, within three months after the end of the year, a statement of account in such form and specifying such particulars as may be prescribed either generally or for any particular local area or class of cases.

(3) The landlord or such agent, as the case may be, shall prepare and retain a copy of the statement containing similar particulars.

Penalties
and fine
for with-
holding
receipts
and state-
ments of
account
and failing
to keep
counter-
parts.

48. (1) If a landlord or his agent without reasonable cause refuses or neglects to deliver to a non-agricultural tenant a receipt in accordance with the provisions of section 46 for any rent paid by the non-agricultural tenant, such tenant may, within three months from the date of payment, institute a suit to recover from such landlord or agent, as the case may be, such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

(2) If a landlord or his agent without reasonable cause refuses or neglects to deliver to a non-agricultural tenant demanding the same either the receipt in full discharge or, if the non-agricultural tenant is not entitled to such a receipt, the statement of account for any year required by section 47, such tenant may, within the next ensuing Bengali year, institute a suit to recover from such landlord or agent, as the case may be, such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by such tenant to the landlord during the year for which the receipt or account should have been delivered.

(3) If a landlord or his agent, without reasonable cause, fails to deliver to the non-agricultural tenant a receipt or statement or to prepare and retain a counterfoil or copy of a receipt or statement, as required by either of the said

XX of 1949.]

(Chapter VII.—General Provisions as to rent of non-agricultural tenancies.—Section 48.)

sections, such landlord or agent, as the case may be, shall be liable to a fine not exceeding fifty rupees, to be imposed, after summary inquiry, by the Collector.

(4) The Collector may hold a summary inquiry under sub-section (3), either on information received from a Revenue-officer within one year, or upon complaint of the party aggrieved made within three months, from the date of failure, or upon the report of a Civil Court.

(5) Where, in any case instituted under sub-section (3), the Collector discharges any landlord or agent, and is satisfied that the complaint of the non-agricultural tenant on which the proceedings were instituted is false or vexatious, the Collector may, in his discretion, by his order of discharge, direct the non-agricultural tenant to pay to such landlord or agent such compensation, not exceeding fifty rupees, as the Collector thinks fit.

(6) An appeal shall lie to the Commissioner of the Division against any order of the Collector imposing a fine under sub-section (3) or awarding compensation under sub-section (5); and the order passed by the Commissioner on such appeal shall, subject to any order which may be passed on revision by the Board of Revenue, be final.

(7) Any fine imposed or compensation awarded under this section may be recovered in the manner provided by any law for the time being in force for the recovery of a public demand.

(8) For the purpose of an inquiry under this section the Collector shall have power to summon and enforce the attendance of witnesses, and compel the production of documents in the same manner as is provided in the case of a Court under the Code of Civil Procedure, 1908.

Act V
of 1908

(9) The existence of a dispute as to the rent or area of a tenancy on account of which rent is paid shall not be deemed to be a reasonable cause for refusing, neglecting or otherwise failing to deliver—

(a) a receipt for any amount actually paid on account of rent, or

(b) the statement of account required by section 47, and the refusal of the non-agricultural tenant to accept the receipt shall not be deemed to be a reasonable cause for failing to prepare and retain a counterfoil of such receipt as required by section 46.

[West Ben. Act

(Chapter VII.—General Provisions as to rent of non-agricultural tenancies.—Sections 49—51.)

State
Government
and to

of
receipt
and
account.

Effect of
receipt by
registered
proprietor,
manager or
mortgagee.

49. (1) The ¹[State], Government shall cause to be prepared and kept for sale to landlords at all subdivisional offices forms of receipts with counterfoils and of statements of account suitable for use under sections 46 and 47.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the ¹[State] Government thinks fit.

50. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorised in that behalf, shall be a sufficient discharge for the rent; and the non-agricultural tenant liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person:

Ben. Act
VII of
1876.

Provided that nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee.

Deposit of rent.

Applica-
tion to
deposit
rent in
Court.

51. (1) In any of the following cases, namely—

- (a) when a non-agricultural tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;
- (b) when a non-agricultural tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;
- (c) when the rent is payable to co-sharers jointly and the non-agricultural tenant is unable to obtain the joint receipt of the co-sharers for the money and no person has been empowered to receive the rent on their behalf; or
- (d) when the non-agricultural tenant entertains a *bona fide* doubt as to who is entitled to receive the rent,

the non-agricultural tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenancy an application in writing for permission to deposit in the Court a sum not less than the amount of the money then due.

(2) The application shall—

- (a) contain a statement of the grounds on which it is made;

¹See foot-note 4 on page 583, ante.

XX of 1949.]

(Chapter VII.—General Provisions as to rent of non-agricultural tenancies.—Sections 52, 53.)

(b) state—

(i) in the cases referred to in clauses (a) and (b) of sub-section (1) the name of the person to whose credit the deposit is to be entered,

(ii) in the case referred to in clause (c) of that sub-section, the names of the co-sharers to whom the rent is due, or of so many of them as the non-agricultural tenant may be able to specify, and

(iii) in the case referred to in clause (d) of that sub-section, the name of the person to whom the rent was last paid and of the person or persons now claiming it;

(c) be signed and verified in the manner provided in sub-rules (2) and (3) of rule 15 of Order VI in Schedule I to the Code of Civil Procedure, 1908, by the non-agricultural tenant, or where he is not personally cognizant of the facts of the case, by some person so cognizant; and

(d) be accompanied, in the cases referred to in clauses (a) and (b) of sub-section (1) by the prescribed cost of transmission of the money deposited to the landlord and in the cases referred to in clauses (c) and (d) of that sub-section by a fee of the prescribed amount.

Act V of 1908.

52. (1) If it appears to the Court to which an application is made under section 51 that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

Receipt granted by Court for rent deposited to be a valid acquittance.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the non-agricultural tenant and deposited as aforesaid in the same manner and to the same extent as if that amount of rent had been received—

in the cases referred to in clauses (a) and (b) of sub-section (1) of section 51 by the person specified in the application as the person to whose credit the deposit was to be entered;

in the case referred to in clause (c) of that sub-section, by the co-sharers to whom the rent is due; and

in the case referred to in clause (d) of that sub-section, by the person entitled to the rent.

53. The Court receiving a deposit—

(i) in the case referred to in clause (a) or in clause (b) of sub-section (1) of section 51 shall forthwith forward the same by postal money-order to the address of the landlord; and

Procedure of payment to the landlord of rent deposited.

(Chapter VII.—General Provisions as to rent of non-agricultural tenancies.—Sections 54, 55.)

- (ii) in the case referred to in clause (c) or in clause (d) of that sub-section shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof containing a statement of all material particulars, and, if the amount of the deposit is not paid away under section 54 within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith in the case referred to in clause (c) of that sub-section cause a notice of the receipt of the deposit to be posted free of charge at the landlord's local office, if any, and in some conspicuous place in the village or town in which the non-agricultural land comprised within the tenancy or any portion thereof is situated, and in the case referred to in clause (d) of that sub-section cause a like notice to be served free of charge on every person who it has reason to believe claims, or is entitled to, the deposit.

Payment
or refund
of deposit

54. (1) The Court may pay the amount of the deposit notified under section 53 to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(2) If no payment is made under clause (i) of section 53 or under sub-section (1) before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

(3) No suit or other proceeding shall be instituted against the ¹[Government] or against any officer of the ¹[Government], in respect of anything done by a Court receiving a deposit under section 52 but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

Penalty for refusing to receive rent.

Penalty for
refusing to
receive
rent ten-
dered by
postal
money-
order or
deposited.

55. If a landlord or his agent refuses without reasonable cause to receive payment of rent remitted by postal money-order or deposited in Court, the landlord shall be precluded from recovering, by suit, interest, costs or damages in respect of the same, and the Court may in addition award to the non-agricultural tenant damages not exceeding twelve and a half *per centum* on the whole amount claimed by the plaintiff.

¹See footnote 1 on page 568, ante.

XX of 1949.]

(Chapter VII.—General Provisions as to rent of non-agricultural tenancies.—Sections 56—68.)

The plea of the existence of any dispute as to the amount of rent of or the area of the land comprised in the tenancy shall not be deemed to be a reasonable cause under this section :

Provided that, when a landlord accepts rent, which has been deposited, or remitted by postal money-order, the fact of his acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the application for permission to deposit or in the postal money-order form.

Arrears of rent.

56. A non-agricultural tenant shall not be liable to ejectment for arrears of rent, but his tenancy shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

Liability to sale for arrears.

57. (1) An arrear of rent shall bear simple interest at the rate of six and a quarter *per centum per annum* from the expiration of the Bengali year in which the rent falls due to the date of payment or of the institution of the suit, whichever date is earlier.

Interest on arrears.

(2) Nothing in any contract between a landlord and a non-agricultural tenant made before or after the commencement of this Act shall affect the provisions of sub-section (1) relating to interest payable on arrears of rent.

58. (1) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twelve and a half *per centum* on the amount of rent decreed, as it thinks fit :

Power to award damages on rent withheld without reasonable cause, or to defendant improperly sued for rent.

Provided that interest shall not be decreed when damages are awarded under this section :

Provided also that where damages are awarded—

(i) the amount of such damages shall not be less than the interest accruing up to the date of the institution of the suit, and

(ii) interest on the arrear may be awarded from the date of the institution of the suit up to the date of payment at such rate as the Court directs.

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twelve and a half *per centum* on the whole amount claimed by the plaintiff, as it thinks fit.

(Chapter VII.—General Provisions as to rent of non-agricultural tenancies.—Sections 59—62.)

Liability for rent on change of landlord or after transfer of tenancy.

Non-agri-
cultural
tenant not
liable to
transferee
of land-
lord's
interest for
rent paid
to former
landlord
without
notice of
the
transfer.

59. (1) A non-agricultural tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the non-agricultural tenant.

(2) Where there is more than one non-agricultural tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the non-agricultural tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

Liability

60. When a non-agricultural tenant transfers his tenancy in whole or in part, the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent due before the transfer:

Provided that the transferor shall not be liable to the landlord for such arrears of rent if the transferee has agreed to pay such arrears to the landlord and the fact has been mentioned in the instrument of transfer.

Illegal impositions.

Abwab,
etc., illegal.

61. All impositions upon non-agricultural tenants under the denomination of *abwab*, *mathat* or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

Fine for
realisation
of *abwab*,
etc.

62. (1) If a landlord or his agent realises from a non-agricultural tenant any imposition declared under section 61 to be illegal, such landlord or agent, as the case may be, shall be liable to the same fine, to be imposed in the same manner, as in sub-section (3) of section 48, and the provisions of sub-sections (4), (7) and (8) of the said section relating to inquiry, fine and procedure shall, *mutatis mutandis* and so far as may be, apply to proceedings under this section.

(2) An appeal shall lie to the District Judge against an order imposing a fine under this section, and the order passed by the District Judge on such appeal shall be final.

(3) The imposition of a fine on a landlord or landlord's agent under this section shall not operate as a bar to the institution of a suit under section 63.

XX of 1949.]

(Chapter VII.—General Provisions as to rent of non-agricultural tenancies.—Section 63—Chapter VIII.—Improvements.—Sections 64—66.)

63. Every non-agricultural tenant from whom, except under any special enactment for the time being in force, any sum of money is exacted by his landlord in excess of the rent or interest lawfully payable, may, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees; or, when double the amount so exacted exceeds two hundred rupees, not exceeding double that amount.

Penalty for exaction by landlord from non-agricultural tenant of sum in excess of the rent payable.

CHAPTER VIII.

IMPROVEMENTS.

64. For the purposes of this Act the term “improvement” used with reference to a tenancy shall mean any work which adds to the value of the non-agricultural land comprised in the tenancy, which is suitable to such land and consistent with any of the purposes specified in section 4 for which it is being used and which, if not executed on such land, is either executed directly for its benefit, or is, after execution, made directly beneficial to it, and subject to the foregoing provisions, shall include the following, namely—

Definition of “improvement”.

- (a) laying out of passages or roads,
- (b) providing open spaces for ventilation,
- (c) providing facilities for taking water,
- (d) laying out drainage connections,

but shall not include any work executed by a non-agricultural tenant if it substantially diminishes the value of his landlord's property.

65. (1) Subject to the provisions of sub-section (2), neither the non-agricultural tenant nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the tenancy.

Rights to make improvements.

(2) If both the non-agricultural tenant and his landlord wish to make the same improvement the non-agricultural tenant shall have the prior right to make it, unless it affects another tenancy or other tenancies under the same landlord.

(3) Any fee realised from a non-agricultural tenant for permission to make any improvement in respect of his tenancy shall be deemed to be an *abwab* and the provisions of section 61 shall apply thereto.

66. (1) If a question arises between the non-agricultural tenant and his landlord—

- (a) as to the right to make an improvement, or
 - (b) as to whether a particular work is an improvement,
- the Collector may, on the application of either party, decide the question.

Collector to decide question as to right to make improvement, etc.

(Chapter VIII.—Improvements.—Sections 67, 68.)

(2) An appeal, if presented within thirty days from the date of the order appealed against, shall lie to the District Judge from every order passed by the Collector under sub-section (1) and the order passed by the District Judge on such appeal shall be final.

Registration of landlord's improvements.

67. (1) A landlord may, by application to such Revenue-officer as the [State] Government may appoint in this behalf, register any improvement which he has lawfully made or which has been lawfully made wholly or partly at his expense or which he has assisted a non-agricultural tenant in making.

(2) Every such application shall be in the prescribed form and shall contain such particulars and shall be verified in such manner, by local inquiry or otherwise, as may be prescribed.

(3) The Revenue-officer receiving the application may reject it if it has not been made within twelve months,—

- (a) in the case of improvements made before the commencement of this Act, from the commencement of this Act; and
- (b) in the case of improvements made after the commencement of this Act, from the date of the completion of the work.

Application to record evidence as to improvement.

68. (1) If any non-agricultural tenant holding any non-agricultural land or his landlord desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to the Revenue-officer to whom an application for the registration of such improvement may be made under sub-section (1) of section 67 and such Revenue-officer shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence:

Provided that such Revenue-officer shall not so record the evidence if he considers that there were no reasonable grounds for the making of the application, or if it appears to him that the subject-matter thereof is under inquiry in a Civil Court.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in every subsequent proceeding between the landlord and the non-agricultural tenant or any persons claiming under them.

¹See footnote 4 on p. 563, *ante*.

XX of 1949.]

(Chapter IX.—Other incidents of non-agricultural tenancies.—
Chapter X.—Conversion of agricultural lands into non-agricultural tenancies.—Sections 69—72.)

CHAPTER IX.

OTHER INCIDENTS OF NON-AGRICULTURAL TENANCIES.

69. Where a tenancy is held by a non-agricultural tenant subject to the condition of employment in any industrial concern, such tenant shall, notwithstanding anything elsewhere contained in this Act, be liable to be ejected from the land comprised in such tenancy on the termination of such employment.

Eviction of non-agricultural tenants holding tenancies conditional upon employment in industrial concerns.

70. No non-agricultural tenant shall be ejected from the tenancy or from any non-agricultural land which he holds except in execution of a decree of a competent Civil Court.

No ejection except in execution of decree.

IV of 1882.

71. The provisions of the Transfer of Property Act, 1882, and of any other law for the time being in force, in so far as they may be applicable and in so far as they are not inconsistent with the provisions of this Act, shall continue to apply to all tenancies to which the provisions of this Act apply.

Application of the Transfer of Property Act, 1882, or other law.

CHAPTER X.

CONVERSION OF AGRICULTURAL LANDS INTO NON-AGRICULTURAL TENANCIES.

72. (1) A tenant holding any land not being non-agricultural land which is situated within any area to which this Act extends or his landlord, may apply to the Collector for the conversion of such land into a tenancy to which the provisions of this Act apply and, on receipt of such application, the Collector shall, by order in writing, direct such conversion subject to payment of such rent not exceeding twice the rent for the time being payable for such land, as the Collector may fix:

Conversion of agricultural lands into non-agricultural tenancies in certain

Provided that no landlord shall be entitled to apply under this sub-section for such conversion of any land except in the case where such land is being used by the tenant by whom it is held for any purpose not connected with agriculture or horticulture without the express or implied consent of the landlord:

Provided further that no order under this sub-section shall be passed without notice, the prescribed process fee for which shall accompany the application,—

(i) in the case where such application is made by a tenant, to the landlord or the entire body of landlords and to the co-sharer tenants, if any, and .

(Chapter XI.—Judicial Procedure.—Sections 73, 74.)

(ii) in the case where such application is made by a landlord, to the co-sharer landlords, if any, and to the tenant or if there be more than one tenant to all such tenants.

(2) Every order passed under sub-section (1) directing the conversion of any land which is not non-agricultural land into a tenancy to which the provisions of this Act apply shall state the date from which such conversion shall have effect and shall specify the rent which shall be payable in respect of the tenancy into which such land is converted and the rent so specified shall not be enhanced during a period of not less than fifteen years from the date of such order.

(3) An appeal shall lie to the Commissioner of the Division from any order of the Collector under this section if it is presented within thirty days from the date of such order and is accompanied by the prescribed fee and the decision of the Commissioner on such appeal shall be final.

(4) Notwithstanding anything contained in any other law for the time being in force or in any contract, where any land which is not non-agricultural land is converted into a tenancy to which the provisions of this Act apply by an order under this section such land shall with effect from the date on which such conversion takes effect become non-agricultural land and the non-agricultural tenant of such land shall for the purposes of this Act be deemed to have held it as such a tenancy with effect from the date on which such tenant or his predecessor in interest was first inducted into the land.

CHAPTER XI.

JUDICIAL PROCEDURE.

Regard to be had by Civil Courts to entries in record-of-rights.

73. In all areas for which a record-of-rights has been prepared in pursuance of an order made under section 27 and finally published, a Civil Court shall, in all suits between landlord and non-agricultural tenant as such, have regard to the entries in such record-of-rights relating to the subject-matter in dispute which may be produced before it, unless such entries have been proved by evidence to be incorrect; and, when a Civil Court passes a decree at variance with such entries, it shall record its reasons for so doing.

Execution of decrees for arrears of rent by assignees of such decrees.

74. Notwithstanding anything contained in rule 16 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, an application for the execution of a decree for arrears in respect of any non-agricultural land obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the non-agricultural land has become and is vested in him. Act V of 1908.

XX of 1949.]

(Chapter XI.—Judicial Procedure.—Sections 75—77.)

75. A suit for the ejectment of a non-agricultural tenant, on the ground that he has used the non-agricultural land in a manner which renders it unfit for use for the purposes of the tenancy shall not be entertained unless the landlord has served in the prescribed manner, a notice in writing on the non-agricultural tenant—

Relief against forfeitures in certain cases.

- (i) specifying the particular misuse complained of; and
- (ii) if the misuse is capable of remedy, requiring the tenant to remedy the same,

and unless the tenant has, where the misuse is capable of remedy, failed within a reasonable time from the date of the service of the notice to remedy the misuse.

**Ben. Act
III of
1913.**

76. Where the interest of a non-agricultural tenant in any non-agricultural land is sold in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of such land, the purchaser shall take free from all encumbrances which may have been created by such non-agricultural tenant or his predecessor in interest and is subsisting immediately before the purchase takes effect, but subject to the interest of any under-tenant having under section 22 the rights and liabilities of a tenant.

Protection of the interest of an under-tenant having the rights and liabilities of a tenant in case of sale for arrears of rent.

77. Where a non-agricultural tenant or his predecessor in interest has erected any structure on any non-agricultural land held by such tenant and such land is sold in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of such land, the purchaser shall be entitled to obtain delivery of possession of the land sold by the removal of such structure:

Delivery of possession of land sold for arrears of rent which has any structure erected on it by a non-agricultural tenant.

Provided that the judgment-debtor shall be allowed reasonable time by the Court to remove such structure from the property sold before the possession of such property is delivered to the purchaser:

Provided further that it shall be open to the purchaser to obtain possession of such land together with such structure on payment of such compensation for the value of such structure to the judgment-debtor as may be agreed upon between the purchaser and the judgment-debtor or, in the case where they do not agree, as may be determined by the Court on application by the purchaser, and, on payment of such compensation, the interest of the judgment-debtor in such structure shall vest absolutely in the purchaser.

*The West Bengal Non-Agricultural Tenancy .
Act, 1949.*

[West Ben. Act

(*Chapter XI.—Judicial Procedure.—Sections 78, 79.*)

Purchase
of non-
agricul-
tural
tenancy in
execution
of a decree
for arrears
of rent to
take effect
from the
date of
confirma-
tion of the
sale.

78. Notwithstanding anything contained in the Code of Civil Procedure, 1908, whenever the interest of any non-agricultural tenant in any non-agricultural land is sold in execution of a decree for arrears of rent, and the sale is confirmed, the purchase shall take effect from the date of confirmation of the sale. Act V of 1908.

Rules for
disposal
of sale
proceeds.

79. (1) In disposing of the proceeds of a sale of the interest of a non-agricultural tenant in any non-agricultural land in execution of a decree for arrears of rent the following rules instead of those contained in section 73 of the Code of Civil Procedure, 1908, shall be observed, that is to say—

- (a) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenancy to sale;
- (b) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made;
- (c) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom the costs of the application made under this section and any rent which may have fallen due to him in respect of the tenancy between the institution of the suit and the date of the confirmation of the sale;
- (d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application unless the Court, for reasons to be recorded in writing, otherwise directs.

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c) of sub-section (1), the Court shall determine the dispute, and the determination shall have the force of a decree.

XX of 1949.]

(Chapter XI.—Judicial Procedure.—Sections 80—82.)

80. (1) The provisions of rules 58 to 63 (both inclusive) of Order XXI in Schedule I to the Code of Civil Procedure, 1908, shall not apply to the interest of any non-agricultural tenant in any non-agricultural land attached in execution of a decree for arrears due thereon.

Release from attachment of non-agricultural tenancies on payment into Court of the amount of decree or on confession of satisfaction by the decree-holder.

(2) When an order for the sale of the interest of any non-agricultural tenant in any non-agricultural land in execution of such a decree has been made, the interest of such non-agricultural tenant in such land shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree including the costs decreed together with the costs incurred in bringing such interest to sale is paid into Court, or the decree-holder makes an application for the release of such interest from such attachment on the ground that the decree has been satisfied out of Court.

(3) The judgment-debtor or any person whose interests are affected by the sale may pay money into Court under this section.

81. (1) When any person whose interests are affected by the sale of a tenancy of a non-agricultural tenant advertised for sale in execution of a decree for arrears of rent due in respect thereof or in execution of a certificate for arrears of rent due in respect thereof signed under the Bengal Public Demands Recovery Act, 1913, pays into the Court the amount requisite to prevent the sale—

Amount paid into Court to prevent sale to be a mortgage-debt on the tenancy in certain cases.

- (a) the amount so paid by him shall be deemed to be a debt bearing interest at six and a quarter *per centum per annum* and secured by a mortgage of such tenancy to him;
- (b) his mortgage shall take priority over every other charge on such tenancy other than a charge for arrears of rent; and
- (c) he shall be entitled to possession of the tenancy as mortgagee of the non-agricultural tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

82. When a tenancy to which the provisions of this Act apply is advertised for sale—

Inferior tenant paying into Court may deduct from rent.

- (a) in execution of a decree for arrears of rent due in respect of such tenancy from a superior non-agricultural tenant defaulting, or

**Ben. Act
III of
1913.**

[West Ben. Act

(Chapter XI.—Judicial Procedure.—Chapter XII.—Miscellaneous.—Sections 83—84.)

- (b) in execution of a certificate signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of such tenancy from a superior non-agricultural tenant defaulting, Ben. Act III of 1913.

or when such sale is set aside under rule 89 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, and an inferior non-agricultural tenant pays money into Court in order to prevent or set aside the sale, as the case may be, such inferior non-agricultural tenant may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, may, in like manner, deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached. Act V of 1908.

Decree-holder may bid at sale, judgment-debtor may not.

83. (1) Notwithstanding anything contained in rule 72 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, the holder of a decree for arrears of rent in respect of a tenancy of a non-agricultural tenant in execution of which such tenancy is sold may, without the permission of the Court, bid for or purchase the tenancy.

(2) The judgment-debtor shall not bid for or purchase a tenancy so sold.

(3) When a judgment-debtor purchases by himself or through another person a tenancy so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale, and the costs of the application and order and any deficiency of price which may happen on the resale, and all expenses attending it shall be paid by the judgment-debtor.

Meaning of "arrears" and "arrears of rent".

84. For the purposes of this Chapter the terms "arrears" and "arrears of rent" shall be deemed to include interest decreed under section 57 or damages awarded in lieu of interest under sub-section (1) of section 58.

CHAPTER XII.

MISCELLANEOUS.

Bar to application of Act to certain lands and to certain leases.

85. Nothing in this Act shall apply to—

- (a) any land vested in, or in the possession of—

- (i) a port authority of a major port, or
- (ii) a railway administration, or
- (iii) any local authority, or

- (b) any lease in respect of any forest-rights or rights over fisheries or rights to minerals in any non-agricultural land, or

XX of 1949.]

(Chapter XII.—Miscellaneous.—Sections 86—89.)

I of 1894.
XXXV of
1939.
XVII of
1947.
West Ben.
Act II of
1948.
West Ben.
Act XXI
of 1948.
West Ben.
Act VIII
of 1951.
XXX of
1952.

- ¹(c) any land acquired or deemed to have been acquired under the Land Acquisition Act, 1894, or the Defence of India Rules made under the Defence of India Act, 1939, or the Requisitioned Land (Continuance of Powers) Act, 1947, or the West Bengal Land (Requisition and Acquisition) Act, 1948, or the West Bengal Land Development and Planning Act, 1948, or the West Bengal Requisitioned Land (Continuance of Powers) Act, 1951, or the Requisitioning and Acquisition of Immovable Property Act, 1952, or any other law for the time being in force providing for the compulsory acquisition of land, for Government, while such land remains the property of Government, or

Ben. Act
V of 1911.

- (d) any land which is required for carrying out any of the provisions of the Calcutta Improvement Act, 1911.

86. Nothing in any contract between a landlord and a non-agricultural tenant made after the commencement of this Act shall take away or limit the rights of such tenant as provided for by this Act, and any contract which is made in contravention of the provisions of this section or which is inconsistent with, or purports to alter the effect of, any of the provisions of this Act, shall, to the extent of such contravention or inconsistency or to the extent it purports to alter such effect, be void and without effect.

Certain contracts not to affect the provisions of the Act.

87. When under this Act a Court is authorised to make an order on the application of a landlord or a non-agricultural tenant, the application shall be made to the Civil Court which would have jurisdiction to entertain a suit for possession of the non-agricultural land comprised in the tenancy in connection with which the application is made.

Jurisdiction in proceedings under this Act.

88. The provisions of this Act shall have effect in respect of all suits, appeals or proceedings including proceedings in execution for ejectment of a non-agricultural tenant which are pending at the date of commencement of this Act.

Application.

89. In computing the period provided by any law for the time being in force for the execution of a decree for ejectment which was stayed under the Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, 1940, or for the institution of a suit for the ejectment of a non-agricultural tenant, the period during which the said Act continued in force shall be excluded.

Saving of limitation.

Ben. Act
IX of
1940.

¹This clause (c) was substituted for the original clause (c) by s. 3 of the West Bengal Non-Agricultural Tenancy (Amendment) Act, 1953 (West Ben. Act XXIV of 1953).

[West Ben. Act

(Chapter XII.—Miscellaneous.—Sections 90—92.)

Computation of the period for which non-agricultural land has been held in certain cases.

90. If any non-agricultural land has been held by a tenant from before the commencement of the Bengal Non-Agricultural Tenancy (Temporary Provisions) Act 1940—

Ben. Act IX of 1940.

(a) under a lease in writing and the time limited by such lease has expired either before such commencement or at any time during the period the said Act has been in force and the tenant has continued to hold such land during such period, or

(b) under a lease in writing but no term is specified in such lease, or

(c) without a lease in writing,

then in calculating for the purposes of sections 7 and 9 the period for which such land has been held by such tenant,—

(i) in the case where the land has been held under a lease in writing and the time limited by such lease has expired at any time during the continuance in force of the said Act, the period for which such land has been held during such continuance after the expiration of the time limited by such lease, and

(ii) in other cases, the period for which the said Act has been in force,

shall be excluded.

Repeal of Bengal Act XIX of 1936 and Bengal Act IX of 1940.

91. (1) The Bengal Non-Agricultural Lands Assessment Act, 1936, and the Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, 1940, are hereby repealed.

Ben. Act XIX of 1936.
Ben. Act IX of 1940.

(2) All rents settled, records-of-rights or rent-rolls prepared, orders or notifications issued, suits or other proceedings instituted and other things duly done under the Bengal Non-Agricultural Lands Assessment Act, 1936, shall, in so far as they are consistent with the provisions of this Act, be deemed to have been respectively settled, prepared, issued, instituted or done hereunder.

Rules.

92. (1) the [State] Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which the landlord or the tenant may apply to the Court under sub-section (2) of section 8;

XX of 1949.]

(Chapter XII.—Miscellaneous.—Section 92.)

- (b) the determination of a fair and equitable rent referred to in sub-section (3) of section 11;
- (c) the limit of enhancement of rent referred to in sub-section (1) of section 19 and the manner of determination of rent referred to in sub-section (2) of that section;
- (d) the forms of the notices and the amount of the process fees referred to in section 23;
- (e) the manner of making a survey and preparing a record-of-rights in pursuance of an order under section 27 and the procedure to be followed and the powers to be exercised by Revenue-officers when an order under the said section is made;
- (f) the form of a settlement rent-roll referred to in section 29, the manner of preparing the same and the particulars to be specified therein;
- (g) the division of a tenancy and the apportionment of the rent under clause (b) of section 30;
- (h) the manner and period of publication of a draft settlement rent-roll under sub-section (1) of section 31 and the disposal of objections under that sub-section;
- (i) the Revenue authority referred to in sub-section (1) of section 32;
- (j) the publication of the date of confirmation of a settlement rent-roll under sub-section (3) of section 32 and the place and times of inspection of such roll;
- (k) the Revenue authority referred to in sub-section (1) of section 33, the manner of presentation of appeals to such authority and the Board of Revenue and the periods within which such appeals shall be presented under the said sub-section;
- (l) the settlement of rents referred to in section 38;
- (m) the manner of payment or tender of rent by postal money-order under section 44;

[West Ben. Act XX of 1949.]

(Chapter XII.—Miscellaneous.—Section 92.)

- (n) the forms to be used generally or for any particular local area or class of cases for the receipt and counterfoil referred to in section 46, and for the statement of account referred to in sub-section (2) of section 47 and the particulars to be specified in such receipt, counterfoil and statement;
- (o) the cost of transmission of the money deposited in the cases referred to in clauses (a) and (b) of sub-section (1) of section 51 and the amount of the fee referred to in clause (d) of sub-section (2) of that section;
- (p) the manner of publication of the general notice referred to in sub-section (2) of section 59;
- (q) the form of, the particulars to be contained in, and the manner of verification of, applications referred to in sub-section (2) of section 67;
- (r) the amount of process fee referred to in the second proviso to sub-section (1) of section 72 and the amount of fee referred to in sub-section (3) of that section;
- (s) the manner of service of notice issued under this Act where the mode of such service is not provided in this Act.

West Bengal Act XXI of 1949

THE WEST BENGAL CRIMINAL LAW AMENDMENT (SPECIAL COURTS) ACT, 1949¹.

AMENDED

West Ben. Act VIII of 1950.
West Ben. Act XII of 1952.
West Ben. Act XV of 1953.
West Ben. Act XXVI of 1956.

[23rd June, 1949.]

An Act to provide for the more speedy trial and more effective punishment of certain offences.

²[WHEREAS it is expedient in the public interest to provide for the speedy trial of the offences specified in the Schedule;] .

It is hereby enacted as follows:—

1. This Act may be called the West Bengal Criminal Law Amendment (Special Courts) Act, 1949. Short title.

³2. (1) The State Government shall from time to time. Special Courts.
as it deems necessary, constitute by notification in the *Official Gazette*, one or more Special Courts and may by like notification abolish any such Court, if it deems such Court to be no longer necessary.

(2) The State Government shall appoint, as a Judge, to preside over a Special Court, any person who—

(a) is or has been, or is qualified under clause (2) of article 217 of the Constitution of India for appointment as, a Judge of a High Court, or

(b) has, for a period of not less than one year, been a Sessions Judge or an Additional Sessions Judge.

(3) Every Special Court shall have jurisdiction throughout the whole of West Bengal and shall sit at such place or places as the State Government may by notification in the *Official Gazette*, specify in this behalf.

3. *

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, of the 12th January, 1949, Part IV, page 48, and for Proceedings of the West Bengal Legislative Assembly, see the Assembly Proceedings of the West Bengal Legislative Assembly, 1949, Vol. IV, pp. 55-60.

*This preamble within square brackets was substituted for the original preamble by s. 2 of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1952 (West Ben. Act XII of 1952).

²This section 2 was substituted for the original section 2 by s. 3, *ibid*.

³Section 3 was omitted by s. 4, *ibid*.

606 *The West Bengal Criminal Law Amendment (Special Courts) Act, 1949.*

[West Ben. Act

(Sections 4, 5.)

Offences
to be tried
by Special
Courts.

¹4. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, or in any other law, the offences specified in the Schedule shall be triable by Special Courts only : Act V of 1898.

Provided that when trying any case, a Special Court may also try any offence other than an offence specified in the Schedule, with which the accused may under the Code of Criminal Procedure, 1898, be charged at the same trial.

²(1a) Sub-section (2B) of section 337 of the Code of Criminal Procedure, 1898, shall not apply and shall be deemed never to have applied to West Bengal.

(2) The distribution amongst Special Courts of cases involving offences specified in the Schedule, to be tried by

Page 606—

Proced
and
powers
Special
Courts.

In sub-section (1) of section 5, after the words "cognizance of offences" insert the words "in the manner laid down in clauses (a) and (b) of sub-section (1) of section 190 of the Code of Criminal Procedure, 1898,".

Act V of 1898.

(Inserted by West Ben. Act XXIV of 1960, section 2.)

[No. 7, dated the 1st December, 1961.]

adjourn any trial for any purpose unless such adjournment is, in its opinion, necessary in the interests of justice :

Provided further that for the purpose of sub-section (1) of section 356 of the Code, English shall be deemed to be the language of a Special Court and where under the provisions of that sub-section the evidence of witnesses is taken down in the presence and hearing and under the personal direction and superintendence of a Judge presiding over a Special Court and not by such Judge himself, the provisions of sub-section (3) of section 356 shall not apply.]

(1a) "A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a

¹This section 4 was substituted for the original section 4 by s. 5, of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1952 (West Ben. Act XII of 1952.)

²This sub-section was inserted by section 2(a) of the West Bengal Criminal Law Amendment Act, 1956 (West Ben. Act XXVI of 1956).

³These words within square brackets were substituted for the words "Special Judge" by s. 6(1) of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1952 (West Ben. Act XII of 1952).

⁴These words within square brackets were inserted by section 2(b)(i) of the West Bengal Criminal Law Amendment Act, 1956 (West Ben. Act XXVI of 1956).

⁵These provisos within square brackets were substituted for the original proviso by section 6(1) of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1952 (West Ben. Act XII of 1952).

⁶This sub-section (1a) was inserted by s. 2(a) of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1953 (West Ben. Act XV of 1953).

The West Bengal Criminal Law Amendment (Special Courts) Act, 1949.

Page 607-

After section 5, insert the following section, namely :—

“Jurisdiction of Magistrates for certain purposes not to cease. 5A. Nothing in section 4 or section 5 shall affect the jurisdiction and powers of Magistrates under the Code of Criminal Procedure, 1898 during the investigation by the police under the said Code of offences specified in the Schedule.”

full and
him his
r person
commis-
the pur-
Criminal
ed under

(Inserted by West Ben. Act XXIV of 1960, section 3.)

[No. 7, dated the 1st December, 1961.]

**Act V of
1898.**

(1a)], the provisions of section 1898, shall, so far as they are not inconsistent with this Act, apply to the proceedings of a Special Court; and for the purposes of the said provisions, [a Special Court] shall be deemed to be a Court of Session trying cases without a Jury * * *, and a person conducting a prosecution before [a Special Court] shall be deemed to be a Public Prosecutor.

ib-section
rocedure,

(3) A [Special Court] may pass any sentence authorised by law.

6. The High Court may, subject to the provisions of section 7 regarding transfer of cases, exercise, so far as they may be applicable, all the powers conferred by Chapters XXXI and XXXII of the Code of Criminal Procedure, 1898, on a High Court as if [a Special Court] were a Court of Session trying cases without a Jury within the local limits of the High Court's jurisdiction.

Appeal
and
Revision.

7. No Court shall have jurisdiction to transfer any case from [a Special Court] or, save as provided in section 6, have any jurisdiction of any kind in respect of proceedings of [a Special Court].

Bar to
certain
jurisdic-
tion.

¹This expression within square brackets was inserted by s. 2(b) of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1953 (West Ben. Act XV of 1953).

²These words within square brackets were substituted for the words “the Court of the Special Judge” by s. 6(2) of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1952 (West Ben. Act XII of 1952).

³The words “or without the aid of Assessors” were omitted by section 2(b)(ii) of the West Bengal Criminal Law Amendment Act, 1956 (West Ben. Act XXVI of 1956).

⁴These words within square brackets were substituted for the words “a Special Judge” by section 6(2) of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1952 (West Ben. Act XII of 1952).

⁵These words within square brackets were substituted for the words “Special Judge” by s. 6(3), *ibid.*

⁶These words within square brackets were substituted for the words “the Court of the Special Judge” by s. 7, *ibid.*

⁷These words within square brackets were substituted for the words “a Special Judge” by s. 8(a), *ibid.*

⁸These words within square brackets were substituted for the words “the Court of any Special Judge” by s. 8(b), *ibid.*

608 The West Bengal Criminal Law Amendment (Special Courts) Act, 1949.

[West Ben. Act

(Sections 8—12.)

8. 1*

Provision where services of Judge presiding over Special Court ceases to be available.

9. (1) If for any reason the services of the person appointed as a Judge to preside over a Special Court ceases to be available, the State Government shall as often as may be necessary, appoint another person having the qualifications referred to in clause (a) or clause (b) of sub-section (2) of section 2, as a Judge to preside over such Special Court.

(2) A person appointed under sub-section (1) as a Judge to preside over a Special Court may act on the evidence recorded by his predecessor or predecessors or partly recorded by his predecessor or predecessors and partly recorded by himself:

Provided that if the person appointed under sub-section (1) as a Judge to preside over a Special Court is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, he may re-summon any such witness and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.

Application of Act II of 1947 to trials under this Act.

10. The provisions of the Prevention of Corruption Act, II of 1947, shall apply to trials under this Act.

Indemnity.

11. No suit, prosecution or legal proceedings whatever shall lie against any person in respect of anything which is, in good faith, done or intended to be done under this Act.

Pending proceedings in other courts not to be affected.

12. Nothing in this Act shall apply to any proceedings pending on the date of the commencement of the West Bengal Criminal Law Amendment (Special Courts) Amending Ordinance, 1952, in any court other than a Special Court.

West Ben
Ord. VIII
of 1952.

¹Section 8 was omitted by s. 9 of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1952 (West Ben. Act XII of 1952).

²This section 9 was substituted for the original section 9 by s. 10, ibid.

³This sub-section was substituted for the previous sub-section (2) by section 2(c) of the West Bengal Criminal Law Amendment Act, 1956 (West Ben. Act XXVI of 1956).

⁴This section 12 was substituted for the original section 12 by s. 11 of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1952 (West Ben. Act XII of 1952).

The West Bengal Criminal Law Amendment (Special Courts) Act, 1949.

XXI of 1949.]

(Section 13 and the Schedule.)

XLVI of 1952.

13. Sections * * * 6, 7, 8, 9 and 10 of the Criminal Law Amendment Act, 1952, shall not apply and shall be deemed never to have applied to West Bengal.

Certain sections of Act XLVI of 1952, not to apply to West Bengal.

THE SCHEDULE.

[See section 4(2).]

Offences triable by Special Judges.

1. An offence punishable under section 161, section 162, section 163 ³[, section 164, section 165 or section 165A] of the Indian Penal Code.

Act XLV of 1860.

2. An offence punishable under section 409 of the Indian Penal Code, if committed by a public servant or by a person dealing with property belonging to Government as an agent of Government in respect of property—

with which he is entrusted, or
over which he has dominion

in his capacity of a public servant or in the way of his business as such agent.

3. An offence punishable under section 417 or section 420 of the Indian Penal Code, if committed by a public servant or by a person dealing with property belonging to Government as an agent of Government, while purporting to act as such public servant or agent.

7. An offence punishable under section 5 of the Prevention of Corruption Act, 1947.

8. Any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in items ⁵[1, 2, 3 and 7].

¹Section 13 was added by s. 3 of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1953 (West Ben. Act XV of 1953).

²The figure "5," was omitted by section 2(d) of the West Bengal Criminal Law Amendment Act, 1956 (West Ben. Act XXVI of 1956).

³The expression within square brackets was substituted for the expression "or section 164 or section 165" by s. 4 of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1953 (West Ben. Act XV of 1953).

⁴Items 1A, 2, 3, 4, 5 and 6 were omitted and these items 2 and 3 were substituted therefor by s. 12(b) of the West Bengal Criminal Law Amendment (Special Courts) Amending Act, 1952 (West Ben. Act XII of 1952).

⁵These figures within square brackets were substituted for the figures word and letter "1, 1A, 2, 3, 4, 5, 6 and 7" by s. 12(c), *ibid*.

